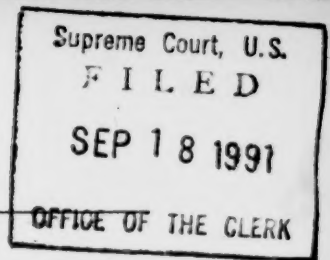


91-484

Case No.



In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

MICHIGAN ATTORNEY GRIEVANCE COMMISSION

Petitioner,

vs.

Doe #1

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Court of Appeals No. 90-2219

JANE SHALLAL
Deputy Grievance Administrator
Michigan Attorney Grievance Commission
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QUESTIONS PRESENTED

- I. DID THE SIXTH CIRCUIT COURT OF APPEALS IMPROPERLY INTERPRET FEDERAL RULE OF CRIMINAL PROCEDURE 6(e)(3)(C)(i) TO PRECLUDE ACCESS OF FEDERAL GRAND JURY MATERIALS FOR USE BY THE MICHIGAN ATTORNEY GRIEVANCE COMMISSION IN INVESTIGATING ATTORNEY MISCONDUCT?
- II. DID THE SIXTH CIRCUIT COURT OF APPEALS ERR IN FINDING THAT DISCLOSURE OF GRAND JURY MATERIALS TO THE MICHIGAN ATTORNEY GRIEVANCE COMMISSION WAS NOT PRELIMINARY TO OR IN CONNECTION WITH A JUDICIAL PROCEEDING?
- III. DID THE UNITED STATES SUPREME COURT, IN ADOPTING RULE 6(e) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, INTEND FOR THE FEDERAL COURTS TO IMPOSE A RIGID AND INFLEXIBLE STANDARD WHEN CONSIDERING A REQUEST FOR DISCLOSURE OF GRAND JURY EVIDENCE SUCH AS THAT PRESENTED BY THE MICHIGAN ATTORNEY GRIEVANCE COMMISSION?
- IV. WHETHER THE SECRECY PROVISIONS OF RULE 6(e) ARE INCONSISTENT WITH THE UNITED STATES ATTORNEY'S ETHICAL OBLIGATION TO REPORT ATTORNEY MISCONDUCT WHICH WOULD OTHERWISE GO UNDETECTED?



— V. WHETHER THE SIXTH CIRCUIT COURT
OF APPEALS FAILED TO APPLY
STANDARDS ESTABLISHED BY THE
UNITED STATES SUPREME COURT
FORMULATED TO DETERMINE WHETHER
A PARTICULARIZED NEED WAS
DEMONSTRATED?

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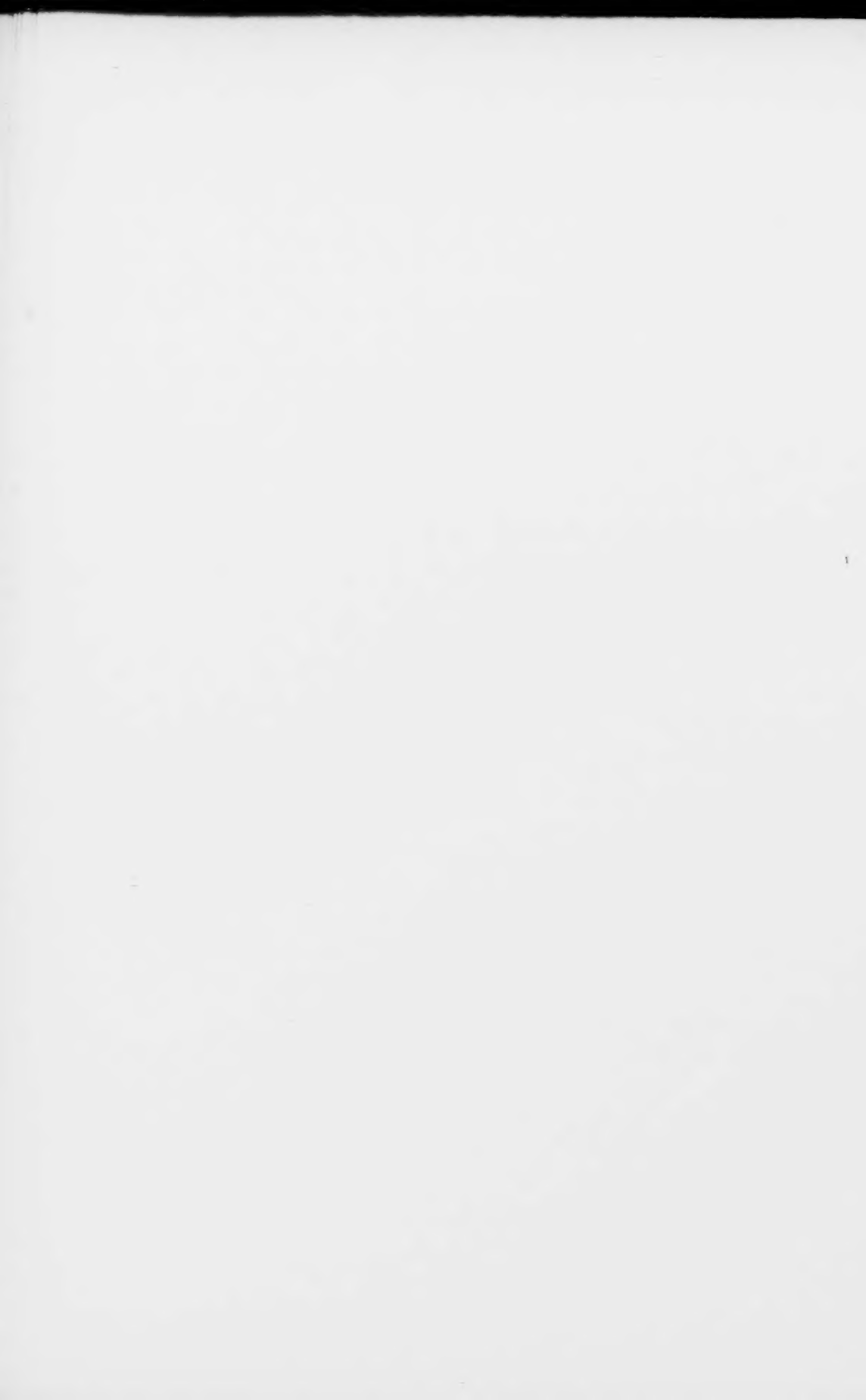


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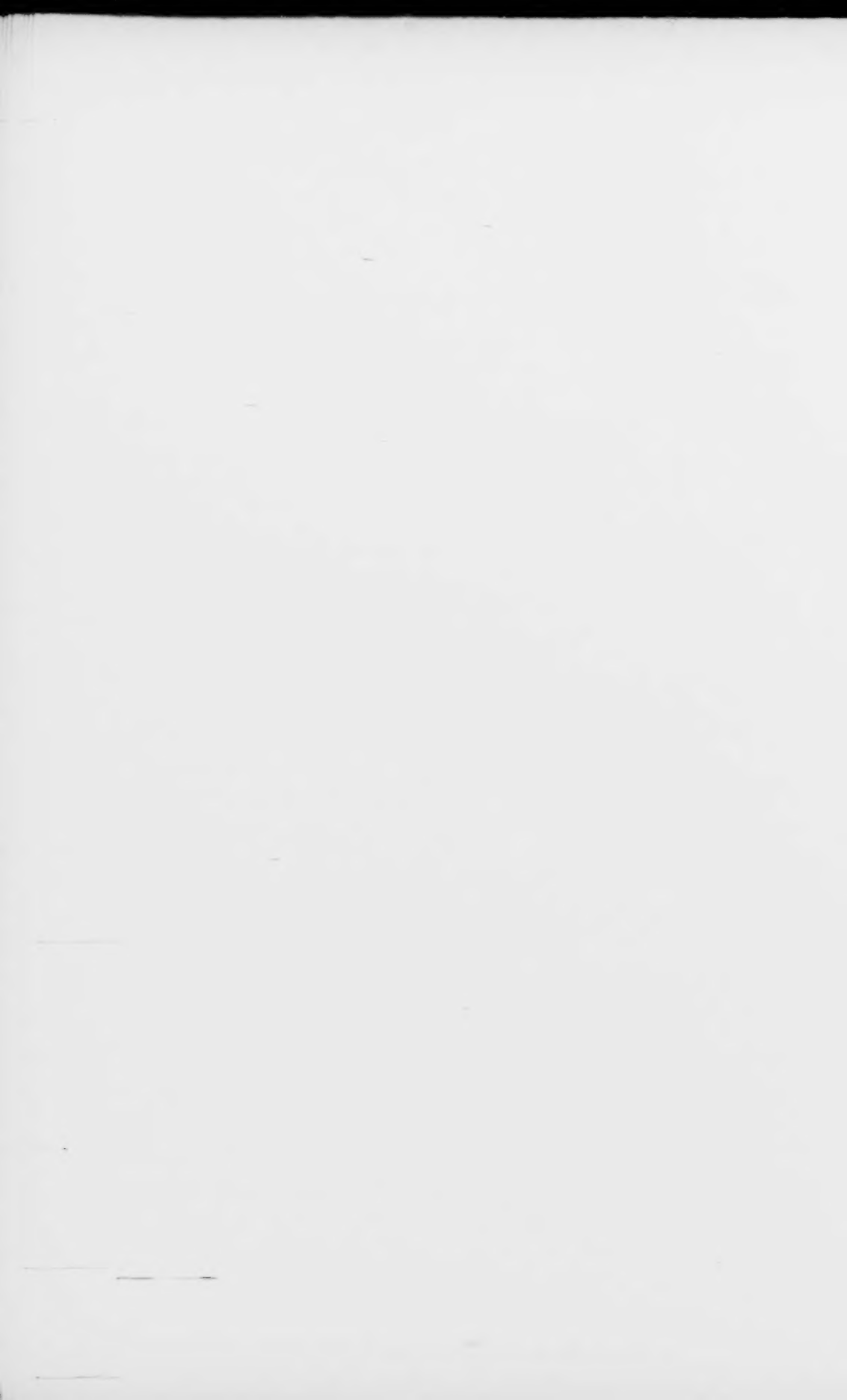
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Order Granting Doe's Motion To Stay Order Granting Disclosure of Grand Jury Materials, No. 90-1394 (D.C., E.D., Mich., filed November 7, 1990) (under seal of the court).

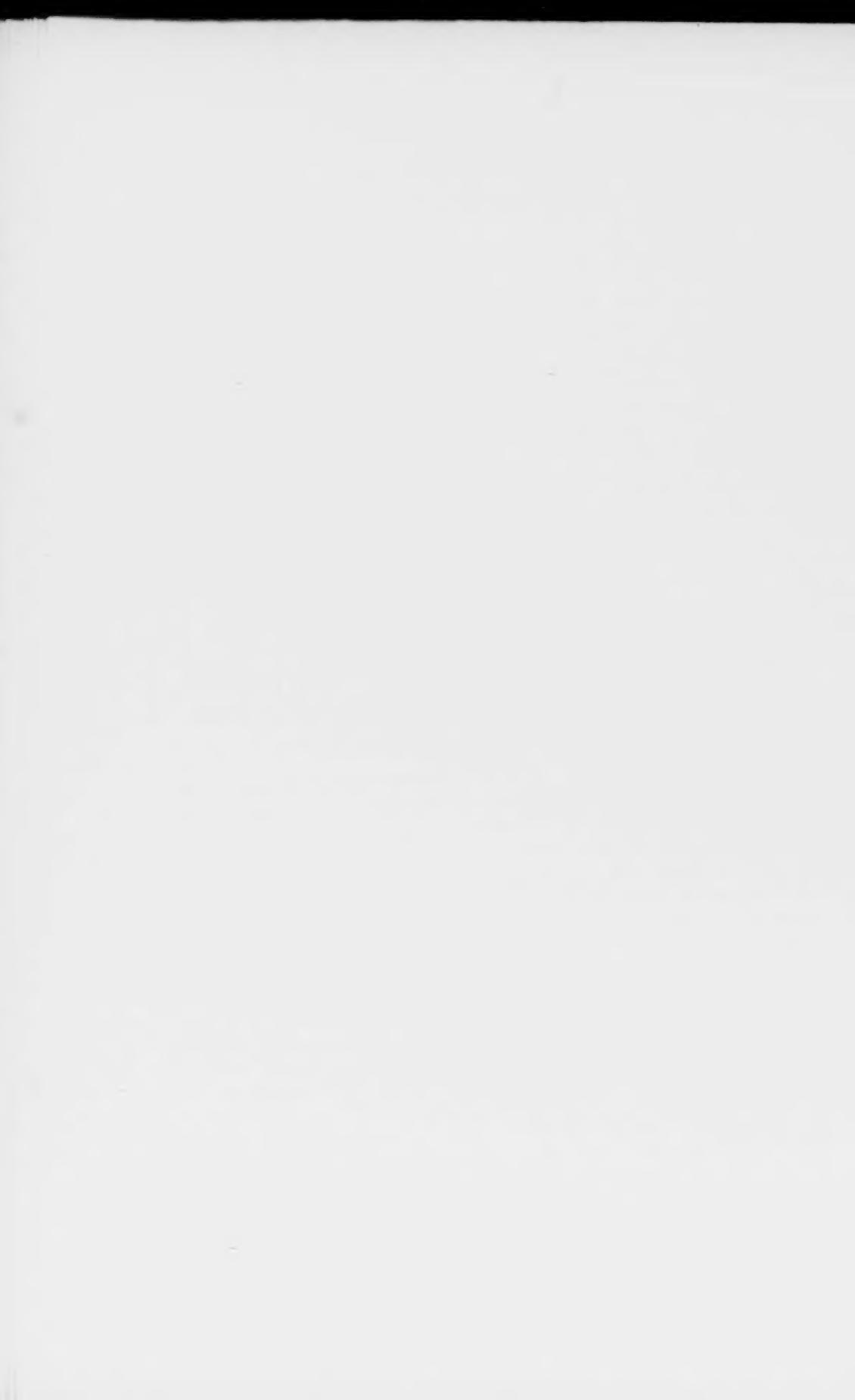
Doe v. Attorney Grievance Commission, No. 90-2219 published opinion, (6th Cir., filed April 26, 1991).

Judgment Reversing District Court's Order and Remanding Case For Further Action, No. 90-2219, (6th Cir., filed April 26, 1991, issued as mandate July 1, 1991).

Order Denying July 1, 1991 Petition For Rehearing, No. 90-2219 (6th Cir., filed June 20, 1991).

Order Granting Immediate Consideration and Denying Motion For Superintending Control, No. 91391, (Mich. S.Ct., filed April 25, 1991).

*The full text of the above opinions and orders which are not under seal of a court are set forth in the Petitioner's Appendix. The sealed documents referred to above and in this petition are being lodged by Petitioner, under seal, with the Clerk of this Court.



STATEMENT OF JURISDICTION

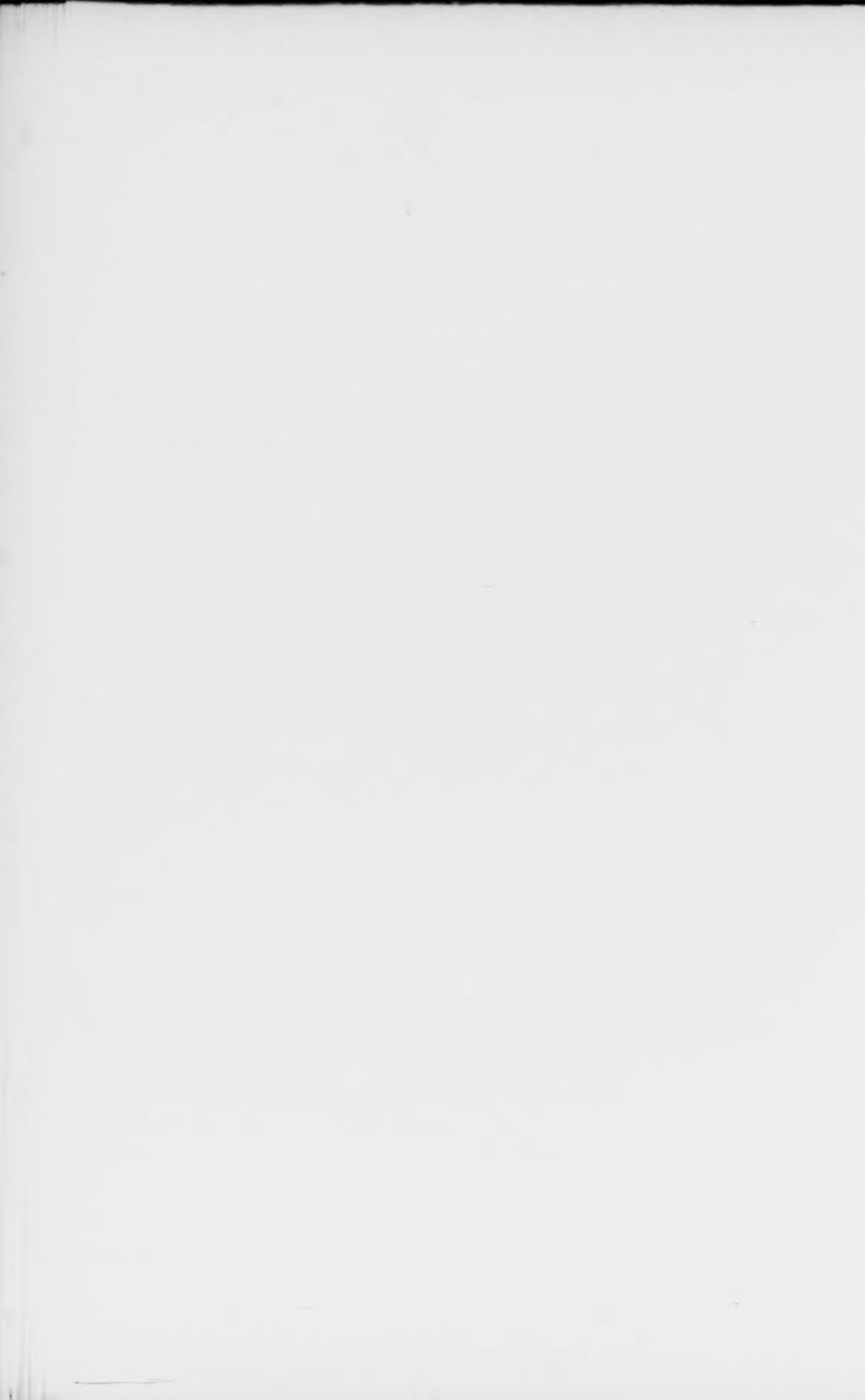
The judgment of the Sixth Circuit Court of Appeals was filed on April 26, 1991, and issued as a mandate on July 1, 1991. (App. p. 45) The Order Denying the Attorney Grievance Commission's Petition For Rehearing was entered on June 20, 1991. (App. p. 49) The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The following provisions and rules are involved in this case:

Fed. R. Crim Pro. 6(e).
Mich. Ct. Rules 7.301, 7.304,
9.103, 9.104, 9.105, 9.106,
9.107, 9.108, 9.109, 9.100,
9.115, 9.122, 9.126, 9.127,
9.131.
Mich. Rules of Prof. Resp. 8.3.

The text of the above citations are set forth in the Appendix.



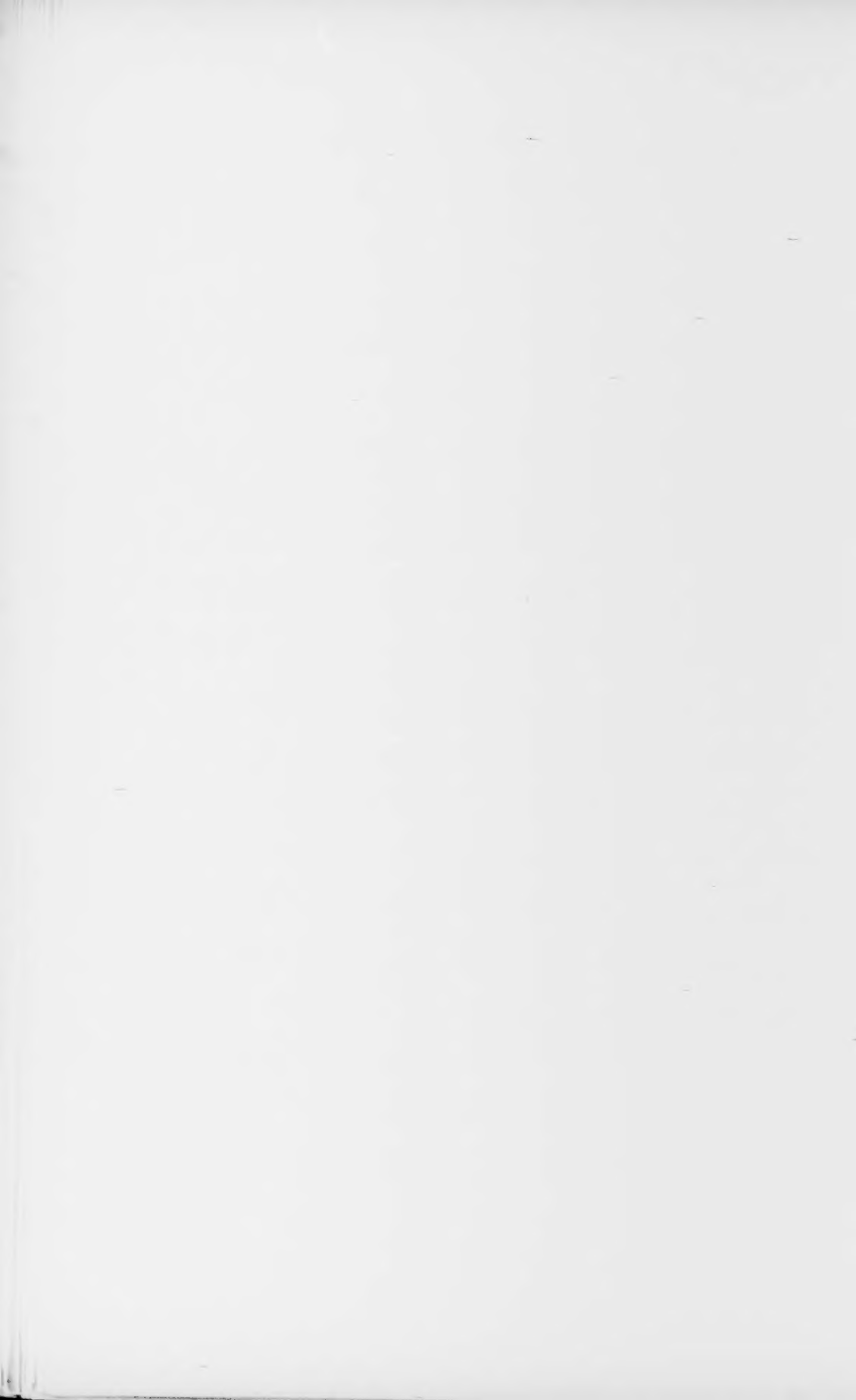
STATEMENT OF THE CASE

The Michigan Attorney Grievance Commission ("hereafter Commission") received information that federal authorities in the Eastern District of Michigan had commenced a criminal investigation into charges that one or more Michigan attorneys provided items of value to a Michigan Court of Appeals judge in exchange for favorable consideration of matters pending in the judge's court. The Commission's information indicated that a federal grand jury was impaneled and certain evidence was compiled in connection with this matter.

On September 11, 1990 the Commission filed a Motion Seeking Disclosure of Evidence Compiled in the Course of Grand Jury Investigation No. 89-4-72 and a Supporting Memorandum of Law. (Motion Seeking Disclosure of Evidence Compiled in



the Grand Jury Investigation Concerning Attorneys No. 90-1394, D.C., E.D. Mich., filed 9-11-90). (Lodged under seal with clerk of this Court). The jurisdiction of the district court was invoked under Federal Rule of Criminal Procedure 6(e)(3)(C)(i), which requires that a petition for disclosure of grand jury evidence be filed in the district court where the grand jury convened. See also, 28 U.S.C.A. 1331. Doe #1, one of the subjects of the grand jury and Attorney Grievance Commission investigations, filed an answer objecting to the Commission's Motion Seeking Disclosure. (Answer In Opposition to Motion, No. 90-1394, D.C., E.D. Mich., filed September 28, 1990). (Lodged under seal with the clerk of this Court). On October 2, 1990, the United States of America, through the United States Attorney, filed a response to the



Commission's Motion Seeking Disclosure of Grand Jury Evidence. In their response, the attorneys representing the government acknowledged that the Commission's need for the grand jury materials was "great" and that the need for disclosure was "greater than the need for absolute secrecy". (Govt.'s Response to Motion for Disclosure, No. 90-1394, D.C., E.D. Mich., filed October 2, 1990). (Lodged under seal with the clerk of this Court).

On October 26, 1990, the Honorable Lawrence P. Zatkoff, United States District Judge for the Eastern District of Michigan, issued a "Memorandum Opinion and Order", concerning the Commission's Request for Disclosure. In his written opinion, Judge Zatkoff stated that "this Court finds that the need for disclosure in this instance outweighs the need for continued secrecy" and granted the Commission's request for

disclosure of the grand jury materials. (Memorandum Opinion and Order, No. 90-1394, D.C., E.D. Mich., filed October 26, 1990). (Lodged under seal with the clerk of this Court). In the same "Memorandum Opinion and Order", the district court also granted a request filed by the Michigan Judicial Tenure Commission regarding the disclosure of grand jury materials relating to a Michigan judge.

Doe #1 then appealed the district court's order to the Sixth Circuit Court of Appeals. On April 26, 1991, the Court of Appeals, in a published Opinion, reversed the district court decision, finding that the district court erred in concluding that disclosure to the Commission was "preliminarily to or in connection with a judicial proceeding" and that the Commission had not demonstrated a particularized need for the evidence



requested. Doe v. Attorney Grievance Commission, No. 90-2219, (6th Cir. filed 04/26/91). (App. p. 1)

On or about May 9, 1991, the Commission filed a Petition For Rehearing With Suggestion For Rehearing En Banc claiming that the Sixth Circuit panel erred in finding that the attorney discipline mechanism employed by the State of Michigan does not constitute a judicial proceeding within the meaning of Federal Rule of Criminal Procedure 6(e)(3)(C)(i). The Commission argued that the panel's decision was replete with error in its description of the composition and procedures of the Michigan attorney disciplinary system. Further, the Commission contended that the Sixth Circuit Court failed to properly apply United States Supreme Court standards in determining whether a particularized need was demonstrated. On June 20, 1991,

the original panel of the Court of Appeals denied the Commission's petition for rehearing. (Order, June 20, 1991). (App. p. 49)

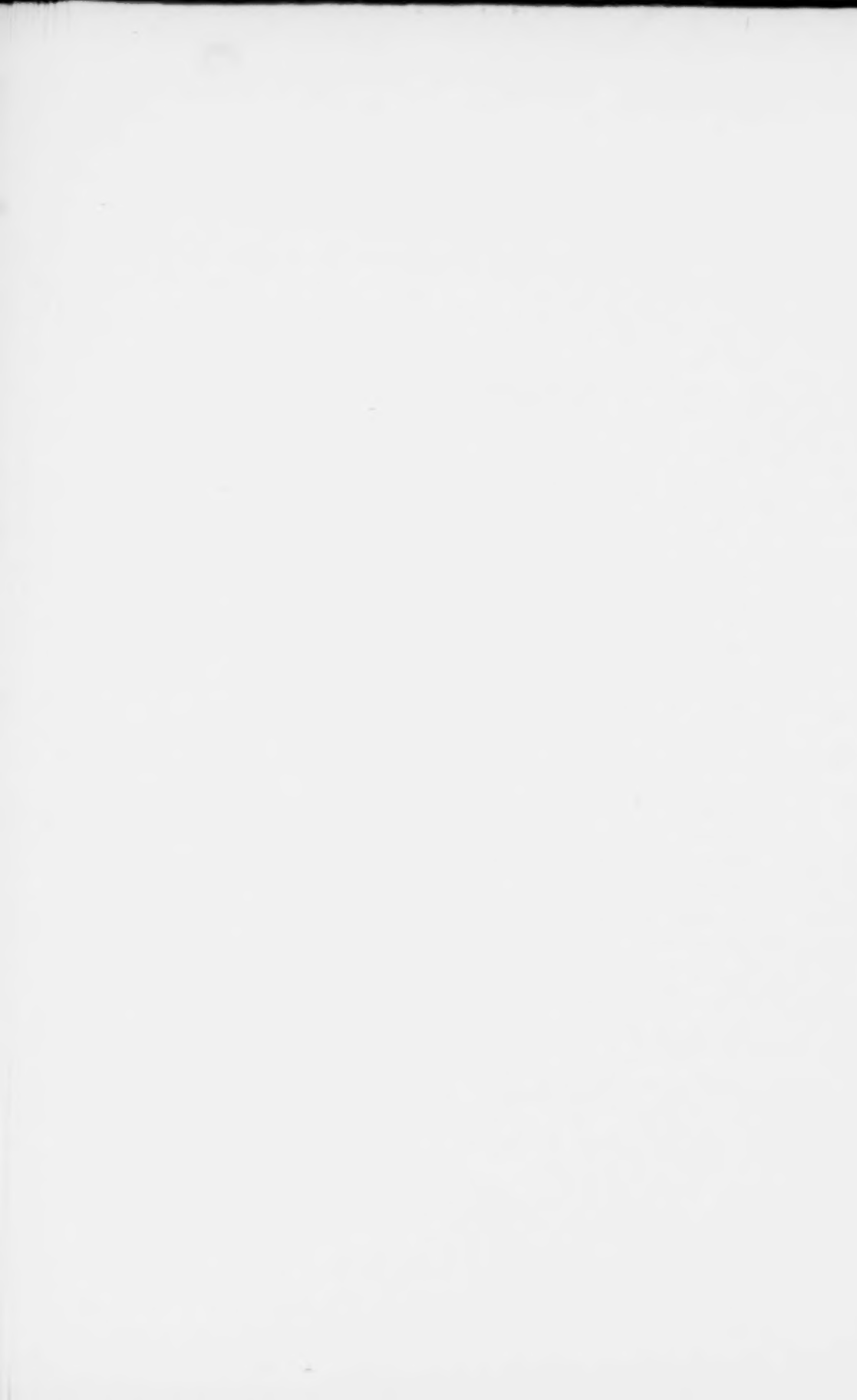
ARGUMENT

I.

THE SIXTH CIRCUIT COURT OF APPEALS IMPROPERLY INTERPRETED FEDERAL RULE OF CRIMINAL PROCEDURE 6(e)(3)(C)(i) TO PRECLUDE ACCESS TO FEDERAL GRAND JURY MATERIALS FOR USE BY THE MICHIGAN ATTORNEY GRIEVANCE COMMISSION IN INVESTIGATING ATTORNEY MISCONDUCT.

A. The Sixth Circuit Court Of Appeals Erred In Finding That Disclosure Of Grand Jury Materials To the Michigan Attorney Grievance Commission Was Not Preliminary To Or In Connection With A Judicial Proceeding.

Rule 6(e) of the Federal Rules of Criminal Procedure prohibits the disclosure of "matters occurring before the Grand Jury." An exception is provided, however, in Rule 6(e)(3)(C)(i). Under this



- exception, disclosure of grand jury materials is allowed where (1) disclosure is sought preliminarily to or in connection with a judicial proceeding, and (2) there is a particularized need for the materials being sought. Douglas Oil Co. v. Petrol Stops, Northwest, 441 U.S. 211, 99 S.Ct. 1667 (1979). A district court's determination to release grand jury transcripts under Rule 6(e) may not be overturned unless there is a showing of a clear abuse of discretion. Douglas Oil Co. v. Petrol Stops, Northwest, supra; In Re Corrugated Container Antitrust Litigation, 687 F.2d 52 (5th Cir. 1982); Petrol Stops Northwest v. Continental Oil, 647 F.2d 1005, 1008 (9th Cir.) cert. denied, 454 U.S. 1098, 102 S.Ct. 672 (1981). It is not the facts as presented by the moving party, but instead the trial judge's exercise of discretion that must be examined upon

review. State of Texas v. United States Steel Corp., 546 F.2d 626 (5th Cir. 1977).

The phrase "preliminarily to a judicial proceeding" has been broadly interpreted. The most frequently cited definition of "judicial proceeding" as used in Rule 6(e)(3)(C)(i) is contained in Doe v. Rosenberry, 255 F.2d 118 (2d Cir. 1958), wherein the Attorney Grievance Committee for the State of New York sought access to evidence presented to the grand jury concerning members of the State Bar. In reaching its decision that the materials should be released to the Grievance Administrator, the Court stated that the term "judicial proceeding" includes:

Any proceedings determinable by a court, having for its object the compliance of any person, subject to judicial control, with standards imposed upon his conduct in the public interest, even though such compliance is enforced without the procedures applicable to the punishment of crime.

255 F.2d at 120.

Case law reflects strong support for releasing grand jury evidence under Rule 6(e)(3)(C)(i) for the purpose of investigating and disciplining attorneys. In The Matter of Disclosure of Testimony before the Grand Jury, 580 F.2d 281 (8th Cir. 1978); United States v. Sobotka, 623 F.2d 764 (2d Cir. 1980) (disclosure of grand jury testimony to the Committee of the Bar of the State of Connecticut necessary for use in an attorney disciplinary proceeding was preliminary to or in connection with a judicial proceeding within Rule 6(e)); In Re Barker v. Oregon State Bar, 741 F.2d 250 (9th Cir. 1984) (permitting disclosure to the Bar Grievance Administrator of grand jury materials relating to attorneys who had become the subject of an ongoing federal probe); In The Matter of Federal Grand Jury



Proceedings, 760 F.2d 436 (2d Cir. 1985) (hearings ordered by the Appellate Division and initiated by the Grievance Committee are a "judicial proceeding" within the meaning of the provision); In Re Petition to Inspect, 576 F. Supp. 1275 (S.D. Fla. 1983) (granting disclosure of grand jury evidence to Special Committee of the Judicial Council of the Eleventh Circuit). Disclosure under Rule 6(e) has been allowed to police discipline boards as well. In Re Special February 1971 Grand Jury v. Conlisk, 490 F.2d 894 (7th Cir. 1973); In Re Grand Jury Transcript, 309 F. Supp. 1050 (S.D. Ohio 1970).

In In The Matter of Electronic Surveillance, 596 F. Supp. 991 (E.D. Mich. 1984), a request was made by the Michigan Attorney Grievance Commission to obtain electronic surveillance evidence which had been compiled against attorneys. The



request was made by the Grievance Administrator in an attempt to determine if evidence that had been compiled by federal authorities would reflect on attorneys' fitness to continue as members of the State Bar. The district court permitted the Grievance Administrator access to the evidence under Federal Rule of Criminal Procedure 6(e)(3)(C)(i). In finding that the Attorney Grievance Commission's investigation was in fact "preliminarily to or in connection with a judicial proceeding", the court stated:

The procedures for attorney discipline in Michigan can likewise be characterized as judicial in nature. The State constitution vests the Michigan Supreme Court with the power to discipline its attorneys. The Michigan Supreme Court has delegated its disciplinary authority to the Attorney Discipline Board. A disciplinary proceeding is initiated by the filing of a complaint, called a "Request for Investigation", with the Grievance Administrator. If warranted, the Grievance

Administrator files a formal complaint with the Attorney Discipline Board. The initial decision whether to discipline an attorney is made by a hearing panel appointed by the Attorney Discipline Board. An aggrieved party may request that the Board review the hearing panel's decision. The Board's decision may be reviewed only through leave to appeal to the Michigan Supreme Court. . . . The Attorney Discipline Board exercises judicial power, so its determination may be considered a judicial proceeding under Rule 6(e)(3)(C)(i).

596 F. Supp. at 999.

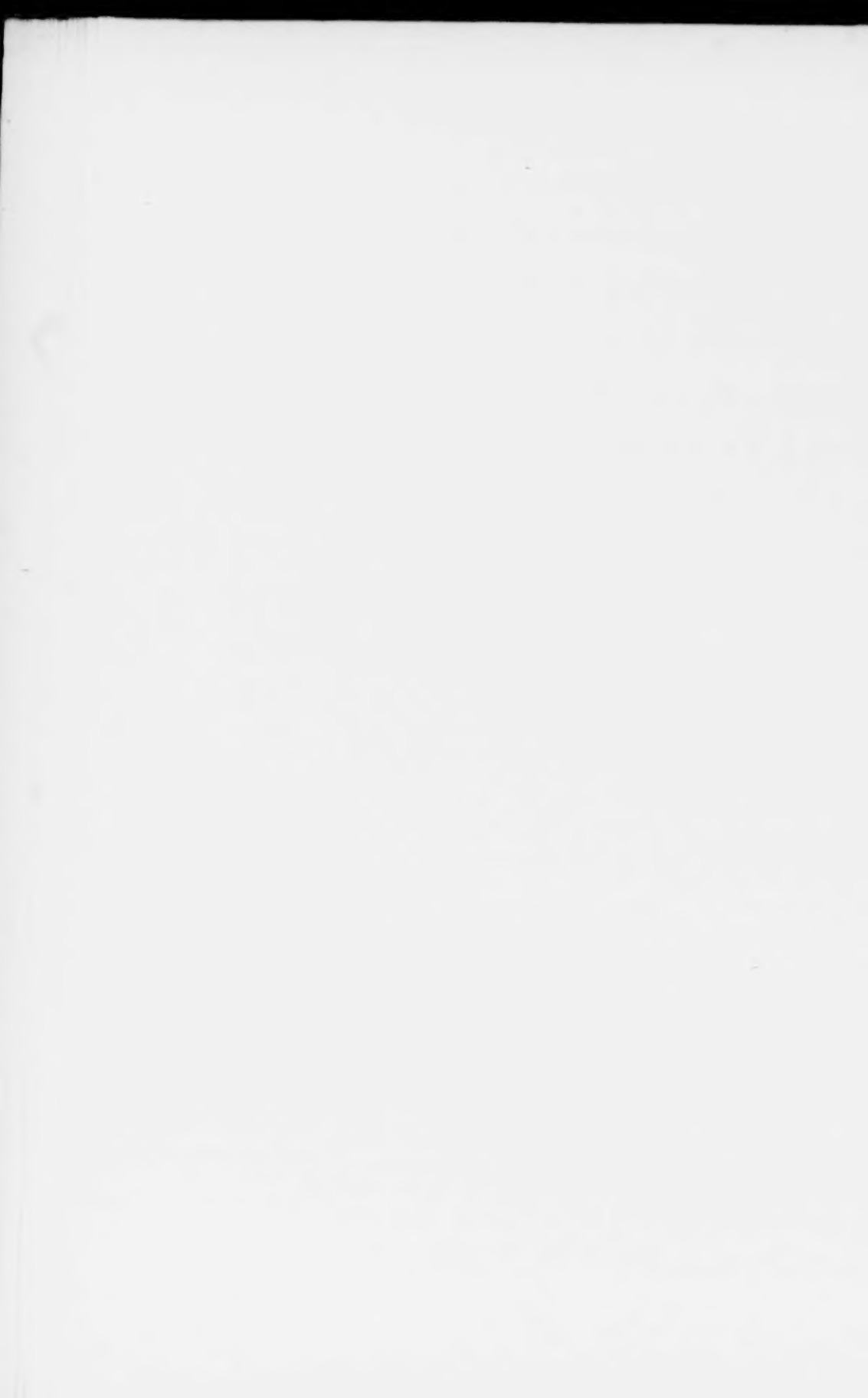
The Court of Appeals, in this case, erred in finding that the attorney discipline system created by the Michigan Supreme Court fell outside the scope of Federal Rule of Criminal Procedure 6(e)(3)(C)(i) "because the disciplinary proceedings are neither carried out before a judicial body, nor subject to sufficient judicial control." (Doe v. United States, No. 90-2219. (App. p. 17) The Sixth



Circuit Court mischaracterized the nature of the disciplinary proceedings and the degree of judicial control involved in the Michigan disciplinary system in determining whether the Commission's request for disclosure of grand jury materials was "preliminary to or in connection with a judicial proceeding."

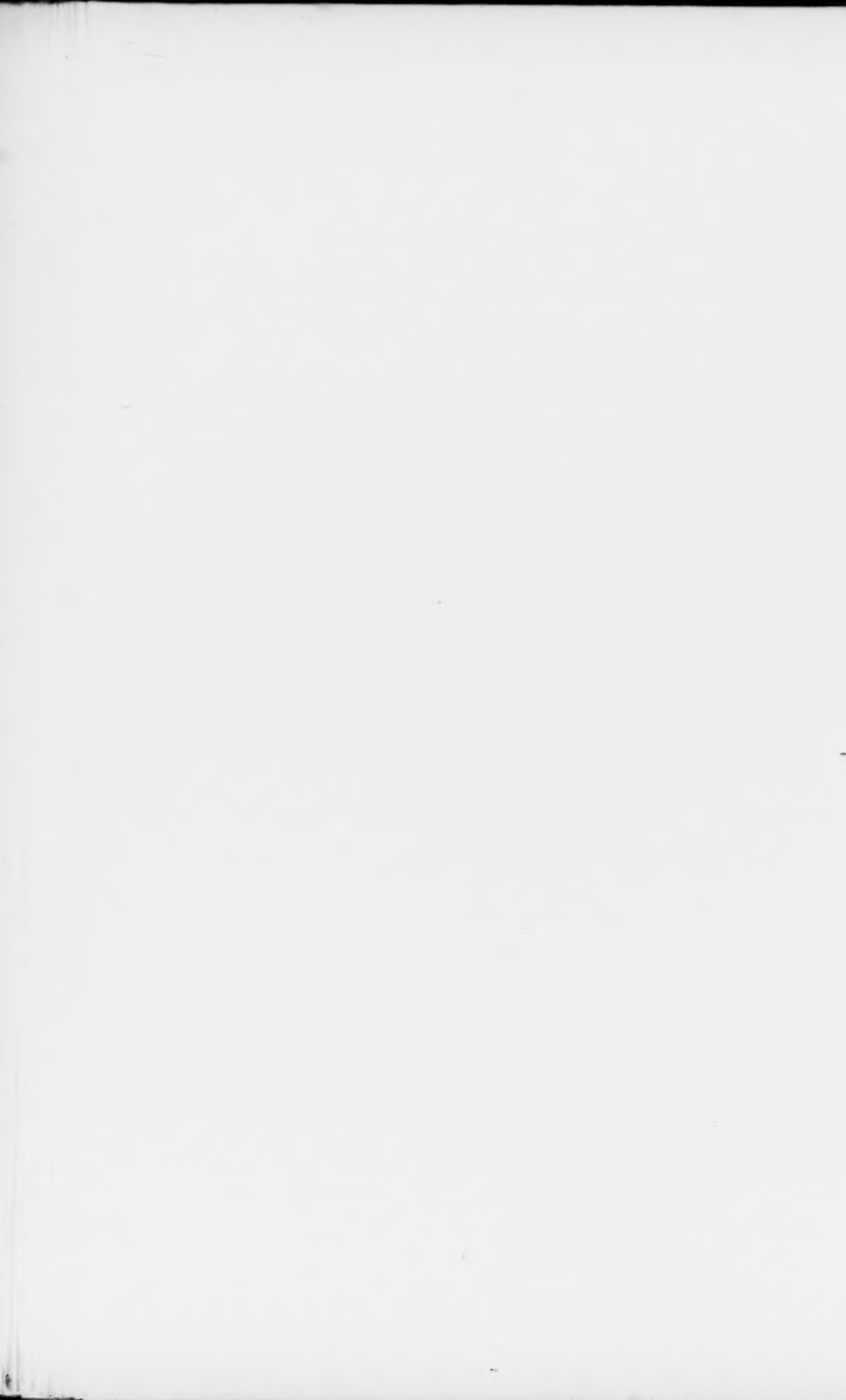
An accurate and careful review of the attorney disciplinary process in Michigan reveals substantial judicial involvement and supports the district court's finding that disclosure of the grand jury information was preliminary to a judicial proceeding. The constitutional power of the Michigan Supreme Court to discipline attorneys is granted by Mich. Const. art. VI Sec. 5. (App. p. 83) Michigan Court Rule 9.108(A) states:

(A) Authority of Commission.
The Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of



its constitutional responsibility to supervise and discipline Michigan attorneys.

The Attorney Grievance Commission is a judicially-created investigatory and prosecutorial body and is empowered to conduct inquiries in connection with the conduct of attorneys. The Grievance Administrator and Deputy Grievance Administrator are appointed by the Michigan Supreme Court. The Grievance Administrator has the power and duty to "investigate alleged misconduct of attorneys, including serving a request for investigation in his own name." Mich. Ct. Rule 9.109. (App. p. 67) The Michigan Attorney Discipline Board is appointed by the supreme court to adjudicate these allegations of misconduct. Both the Grievance Commission and Discipline Board are subject to the supervisory control of the Michigan Supreme Court and as such, the proceedings are



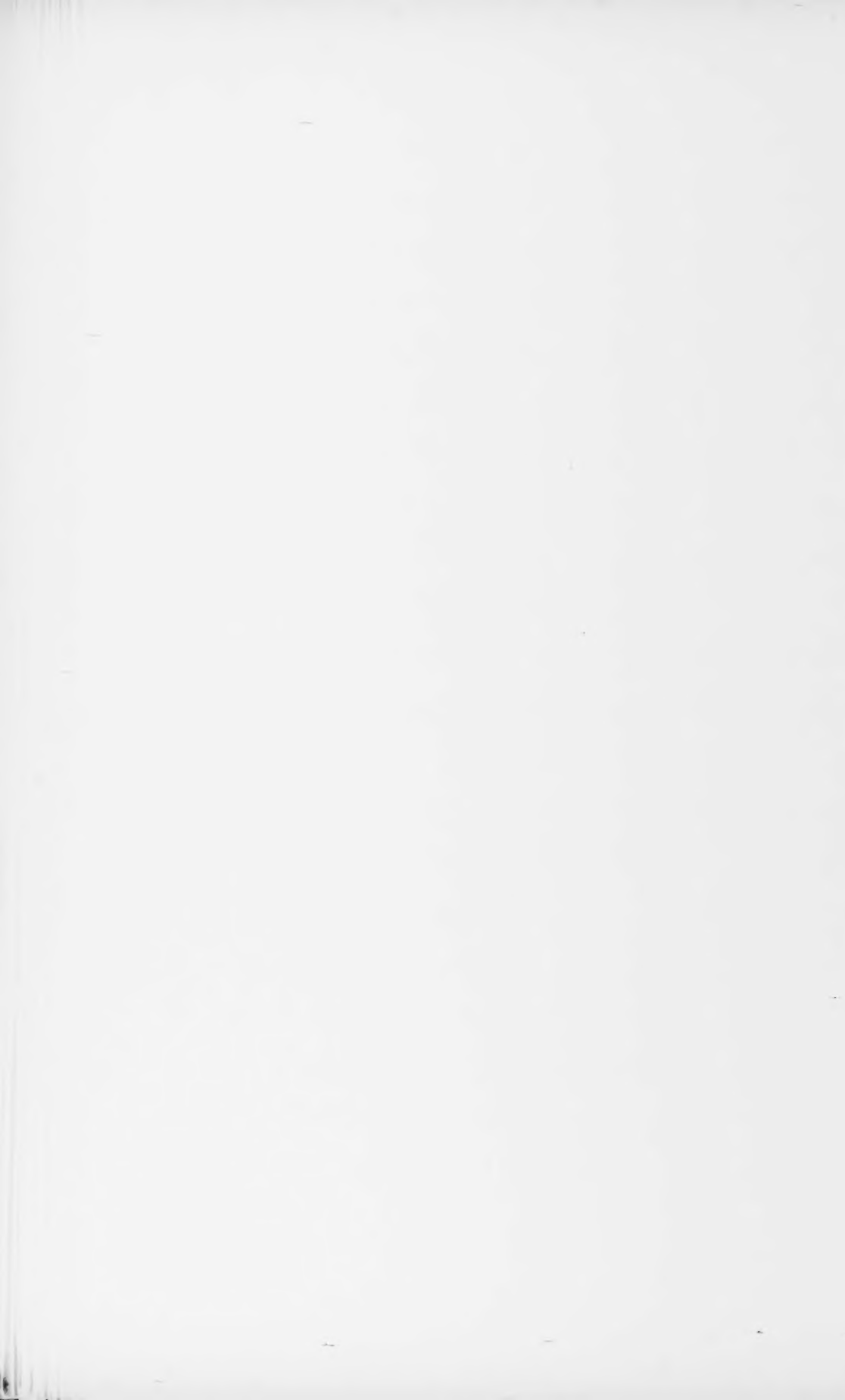
judicial in nature. Erdmann v. Stevens, 458 F.2d 1205 (2d Cir. 1972). The rules provide that the Attorney Grievance Commission, itself, can seek an injunction directly from the Michigan Supreme Court relating to an attorney's misconduct, even if a disciplinary proceeding concerning that conduct is not pending before the Attorney Discipline Board. Mich. Ct. Rule 9.108(E)(4). (App. p. 66)

The Michigan court rules governing attorney disciplinary proceedings, adopted by the Michigan Supreme Court, evidence the court's substantial "judicial involvement" in the disciplinary process. Pursuant to the Rules, the Michigan Supreme Court may order discipline including, revocation, suspension, reprimand, probation and restitution. Mich. Ct. Rules 9.106 and 9.108(E)(4). (App. pp. 61-63) A disciplinary proceeding, whether at the



investigative or adjudicative phase, is subject to the direct superintending control of the Michigan Supreme Court. Mich. Ct. Rule 9.107(A). (App. p. 63) Both the Grievance Commission and the Discipline Board clearly maintain a status far different from mere administrative agencies as characterized by the Sixth Circuit Court of Appeals.

The Michigan Supreme Court's rules not only provide for a review of discipline orders of the Board, but a party aggrieved by a dismissal of a Request for Investigation by the Commission may file a Complaint for Mandamus directly with the supreme court. Mich. Ct. Rule 9.122(A)(2). (App. p. 71-72) The Michigan Supreme Court may grant or deny the relief requested in the mandamus complaint, or enter any other order it finds appropriate, including an Order to Show Cause why the relief sought



in the Complaint should not be granted. Mich. Ct. Rule 7.304. (App. pp. 56-57) The Michigan Supreme Court also reviews and orders investigations relating to Requests for Investigation concerning members and staff of the Grievance Commission. Further, the supreme court directly reviews and investigates all Requests for Investigations filed by the Grievance Commission against an attorney representing a Respondent¹ or witness involved in a disciplinary matter. Mich. Ct. Rule 9.131(C). - (App. p: 76)

Contrary to the finding of the Sixth Circuit Court that "the Michigan Supreme Court has chosen to totally delegate its state constitutional authority to discipline attorneys to the Michigan Attorney Discipline Board", the Michigan

¹A Respondent is the attorney under investigation.



Supreme Court has always maintained strict judicial control over attorney disciplinary matters and has always reserved final authority in discipline cases to itself. Michigan Court Rule 9.110(A) speaks specifically of the Court's "exclusive constitutional responsibility to supervise and discipline Michigan attorneys." (App. p. 71) This responsibility was further recognized in Matter of Grimes:

It is this Court, however, that has ultimate responsibility to oversee the conduct of the approximately 21,000 members of the State Bar, and keep unsullied the reputation of the profession. When an order of the Attorney Discipline Board is appealed, therefore, the Supreme Court may make any order it deems appropriate, including dismissing the appeal.

414 Mich. 448, 489-490, 326 N.W.2d 380, 383 (1982). (Emphasis added).

The Sixth Circuit Court's decision in this matter is replete with factual errors



concerning the structure and operation of the attorney discipline system in Michigan. The Sixth Circuit Court, in its order denying the Commission's Petition for Rehearing, stated that "the matters raised in the petition were fully considered upon the original submission and decision of the case." (Order June 20, 1991). (App. p. 47) In light of the glaring and repeated errors in the Sixth Circuit Court's decision, it is clear that the Court failed to understand and, in fact, totally mischaracterized the degree of judicial control involved in the Michigan disciplinary process.

In connection with its flawed understanding of the Michigan attorney discipline system, the Court misstated the role of the Attorney Discipline Board when it stated that it is the "Board's responsibility to investigate and



discipline attorneys suspected of misconduct. Mich. Ct. Rule 9.105." Mich. Ct. Rule 9.105 was incorrectly cited by the court, since neither that rule nor any other rule assigns an investigative function to the Board. As stated earlier, the Michigan Supreme Court has proclaimed that the Attorney Discipline Board is the "adjudicative arm" of the Supreme Court for discharge of the Supreme Court's "exclusive constitutional responsibility" to supervise and discipline Michigan attorneys. Mich. Ct. Rule 9.110. (App. p. 71)

The Court of Appeals also mischaracterized the nature of the disciplinary hearings before the Board as being "ex parte". (Doe Opinion) (App. p. 29) Attorneys charged with misconduct are entitled to notice of the charges, may be represented by counsel, are entitled to discovery and examination of witnesses.



The hearing itself is adversarial and the rules governing practice and procedure in a nonjury action apply to proceedings before a hearing panel. Mich. Ct. Rule 9.115. (App. p. 68)

Further, in describing the composition of the Commission, the Court of Appeals incorrectly described the manner in which members of the Commission are appointed. Every member of the Commission is a Michigan Supreme Court appointee. Mich. Ct. Rule 9.108(A)-(E). (App. pp. 63-67) Recently, the Michigan Supreme Court amended its rules so that now all members of the Attorney Discipline Board are appointed by the supreme court. Mich. Ct. Rule 9.110(A) and (B). (App. p. 71) Contrary to the Court of Appeals finding that the Commission appoints "one of its - attorney members to the position of Grievance Administrator," the Administrator



and Deputy Grievance Administrator are appointed by the Michigan Supreme Court and neither appointee is a member of the nine-member Commission. Mich. Ct. Rule 9.109. (App. pp. 67-68)

The Sixth Circuit Court's assertion that the Michigan attorney discipline system is funded by a "private organization" was also mistaken. (Doe Opinion, p.12) (App. p. 28) While the Sixth Circuit Court's position that the funding for the attorney disciplinary process is not provided by the Michigan Supreme Court was correct, the Court erred in referring to the State Bar of Michigan as a "private organization". The Michigan discipline system is funded by the State Bar which is a public agency that functions pursuant to rules and regulations prescribed by the Michigan Supreme Court. State Bar of Michigan v. Lansing, 361 Mich.



185, N.W.2d 131 (1960); Mich. Comp. Laws 600.904. (App. p. 82)

The primary rationale offered by the Sixth Circuit Court in support of its denial of the Attorney Grievance Commission's request for access to the grand jury materials, was the fact that appeals to the Michigan Supreme Court in disciplinary matters may be taken by leave only as opposed to appeal by right. The fact that appellate review from an Attorney Discipline Board decision is by leave, rather than by right, clearly does not take the proceedings outside Rule 6(e)'s exception. Every discipline case appealed to the Michigan Supreme Court is reviewed by the Court in that the decision to grant or deny leave is based on a review of the record and consideration of the issues



involved." Further, the number of cases in which leave is granted by the Michigan Supreme Court is not an accurate measure of the court's involvement in the discipline process since the court can, and does, modify actions taken by the Board in lieu of granting leave.' Interestingly enough, Doe #1 in this case has already filed two motions directly to the Michigan Supreme Court requesting various forms of relief. Doe #1 filed a Petition for Immediate Consideration and Motion for Writ of Superintending Control. (Order, Mich. S.Ct. No. 91391) The Michigan Supreme

When an application for leave to appeal is filed, the entire original Attorney Discipline Board file is transmitted to the Michigan Supreme Court for review.

Matter of Fernando Edwards, No. 87328, Mich. Sp. Ct., filed 12/05/90, the court denied leave to appeal but reduced an order of revocation issued by the Board to a suspension of three years.



Court, in its role as overseer of the disciplinary system, has already heard and decided Doe's motions. (Order, Mich. S.Ct., filed April 25, 1991). (App. p. 84)

Further, since January 1991, twelve disciplinary matters were brought before the Michigan Supreme Court. Moreover, Complaints for Mandamus brought against the Michigan Attorney Grievance Commission are filed directly with the supreme court and are reviewed by the court and decided on their merits.¹

The Court of Appeals without giving deference to the facts before it, erroneously found that the Michigan Supreme Court did not exercise "substantial judicial" control over attorney disciplinary proceedings, and therefore the

¹The Grievance Commission must immediately transmit its complete investigative file to the Supreme Court for review when a Mandamus Complaint is filed.

proceedings fell outside the scope of Rule 6(e)(3)(C)(i). The Michigan Supreme Court's judicial role is substantial and clearly defined by court rule. Attorney Grievance Commission investigations and prosecutions are properly characterized as preliminary to a judicial proceeding.

Finally, the Sixth Circuit Court also misconstrued the holding in United States v. Baggot, 463 U.S. 476, 480 (1983), in its decision to reverse the district court's ruling in this matter. Actual judicial redress is not a requirement before certain agency actions can qualify as preliminary to a judicial proceeding. The Court in Baggot did not discuss the definition of "judicial proceeding," but rather focused on whether the grand jury material sought was to be actually used to assist in preparation of a judicial proceeding.

The Sixth Circuit Court, in reversing the district court in this matter, based its ruling on the fact that disclosure to a disciplinary committee can only be made when disciplinary proceedings are heard or reviewed by a judicial tribunal. However, none of the decisions cited by the Sixth Circuit Court specifically hold that judicial review or actual judicial participation in the proceedings was required before grand jury disclosure to a disciplinary authority can be permitted. Nothing in the decisions relied on by Sixth Circuit Court specifically preclude a finding that the Michigan disciplinary system falls within Rule 6(e)'s exception.

The disciplinary system in Michigan is similar to systems in other jurisdictions. Further, the goals and aims of the Michigan system are identical to the disciplinary systems of every other state which have



been granted disclosure of grand jury evidence. The Michigan Attorney Grievance Commission should not be denied the same access to grand jury materials as that granted other disciplinary agencies in the United States. Just as those agencies have an interest in protecting the public and integrity of their legal system, the Michigan Attorney Grievance Commission should be afforded the same right in protecting these interests in Michigan. To deny equal access to the Commission simply because judicial review is by leave, rather than by right, would seriously impede the Commission's duty to enforce rules relating to attorney misconduct.

B. The United States Supreme Court, In Adopting Rule 6(e) Of The Federal Rules Of Criminal Procedure, Did Not Intend Of The Federal Courts To Impose A Rigid And Inflexible Standard When Considering A Request For Disclosure Of Grand Jury Evidence Such As That Presented By The Michigan Attorney Grievance Commission.

The District Court's power to permit



the Attorney Grievance Commission access to grand jury materials should not stand or fall upon a rigid interpretation of Rule 6(e). In Re Petition to Inspect, 735 F.2d 1261 (11th Cir. 1984). Even if the procedures for which the grand jury materials are being sought may not be a "judicial proceeding" in the strict sense, Michigan disciplinary procedures are substantially similar or at least closely analogous to the situations for which the Rule 6(e)(3)(C)(i) exception was created. In Re Petition to Inspect, supra.

Although the situation in Doe, squarely fit within the Eleventh Circuit Court's ruling in In Re Petition to Inspect, the Sixth Circuit Court refused to permit disclosure of the requested material. The Eleventh Circuit Court held that although disclosure to a judicial investigating committee could not be



characterized as a judicial proceeding within the precise language of Rule 6(e)(3)(C)(i), disclosure was not strictly confined to instances spelled out in the rule. 735 F.2d at 1268. The Eleventh Circuit Court of Appeals endorsed the district court's fashioning of an alternate method of disclosure based upon the Court's general supervisory authority over grand jury proceeding and records. The Court held that since the judicial character of the circuit council's procedures "closely mirror" a judicial proceeding, the council's task of inquiring into judicial misconduct was little removed from the judicial proceedings encompassed within Rule 6(e)(3)(C)(i):

Actions by a circuit council or the Judicial Conference do not, therefore, exactly fit within Judge Learned Hand's widely quoted definition of a "judicial proceeding"---that; it "includes any proceeding determinable by a court...." By the same token,



impeachment proceedings before Congress, which are a possible outcome of this investigation, are not by a "court," although the Congress becomes something like a court for this purpose.

Nonetheless, while a committee's investigation is thus perhaps not ancillary to a "judicial proceeding," in the strict sense, the judge-run proceedings with which it is connected fit within Justice Holmes's definition of a "judicial inquiry":

A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. This is its purpose and end.

Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908). Under that definition, a state court's bar disciplinary proceeding has been characterized as a judicial inquiry.

735 F.2d 1261 (11th Cir. 1984) (other citations omitted).

Further, Rule 6(e) has been repeatedly amended to incorporate subsequent



developments in decisions of the federal courts. (i.e. access to IRS, other government personnel, other grand juries.) The history of amendments to Rule 6(e) indicates that the exceptions permitting disclosure are subject to developments by the courts. The court noted:

The Rules are not, and were not intended to be, a rigid code to have an inflexible meaning irrespective of the circumstances ... Accordingly, we do not believe that the district court's power to permit the Committee access to the otherwise secret grand jury minutes must stand or fall upon a literal construction of the language of Rule 6(e).

734 F.2d at 1269.

A strong argument is therefore presented, that in light of overwhelming case law allowing access of grand jury materials to bar disciplinary committees, Rule 6(e) should be amended to explicitly permit access to materials which are necessary for investigating and enforcing

violations of the rules of professional responsibility.

Like the circuit council in In Re Petition to Inspect, the disciplinary proceedings in Michigan satisfy procedural rights such as notice of the charges, compulsion of and the right to examine witnesses. Given the character of the Commission's procedures, and the "judicial inquiry" that comprises the Commission's task, the Michigan disciplinary process is "little removed from the judicial proceedings encompassed within the Rule 6(e)(3)(C)(i) exception." 735 F.2d at 1272.

The question under investigation by the Michigan Attorney Grievance Commission, whether one or more attorneys provided items of value to a court of appeals judge in exchange for favorable consideration of matters pending in the judge's court, is a

matter of great societal importance. The public's confidence in Michigan's entire legal system is at stake. The Commission should be allowed to examine whatever grand jury material is available to determine the truth or falsity of the charges. The Attorney Grievance Commission has an obligation and a right to assure the public that valid complaints are being considered in a forthright and just matter. A full and fair investigation by the Michigan Attorney Grievance Commission, designed to redress attorney wrongdoing and restore public confidence in the legal system, cannot be conducted without access to the grand jury materials. Permitting the Commission to have access to grand jury materials under these circumstances would be consistent with the policy and spirit of Rule 6(e). 735 F.2d at 1272.

C. Rule 6(e)'s Secrecy Provisions Are Inconsistent With The United States Attorney's Ethical Obligation To Report Attorney Misconduct Which Would Otherwise Go Undetected.

Michigan Rule of Professional Conduct 8.3 requires a lawyer having knowledge that another lawyer has violated the Rules of Professional Conduct to inform the Attorney Grievance Commission. Rule 8.3 states:

Rule 8.3 Reporting Professional Misconduct.

- (a) A lawyer having knowledge that another lawyer has committed a significant violation of the rules of Professional Conduct that raise a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the Attorney Grievance Commission.
- (b) A lawyer having knowledge that a judge has committed a significant violation of the Code of Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness or fitness for office shall inform the Judicial Tenure Commission.
- (c) This rule does not require disclosure of information



otherwise protected by Rule 1.6."

This rule is patterned after ABA Model Rule of Professional Conduct 8.3. (App. p. 80)

Assistant United States Attorneys involved in investigating Michigan attorneys or judges, who have knowledge that a Michigan attorney or judge has violated the Michigan Rules of Professional Conduct are obligated, under Michigan law, to report such misconduct to the Attorney Grievance Commission. This obligation is bestowed upon them by virtue of their license to practice law in Michigan. The above reporting requirement has also been adopted by the United States District Court for the Eastern District of Michigan by way of Rule 13 and Appendix A of the Local

"Rule 1.6 pertains to revealing confidences and secrets of a client.



Rules of the Court."

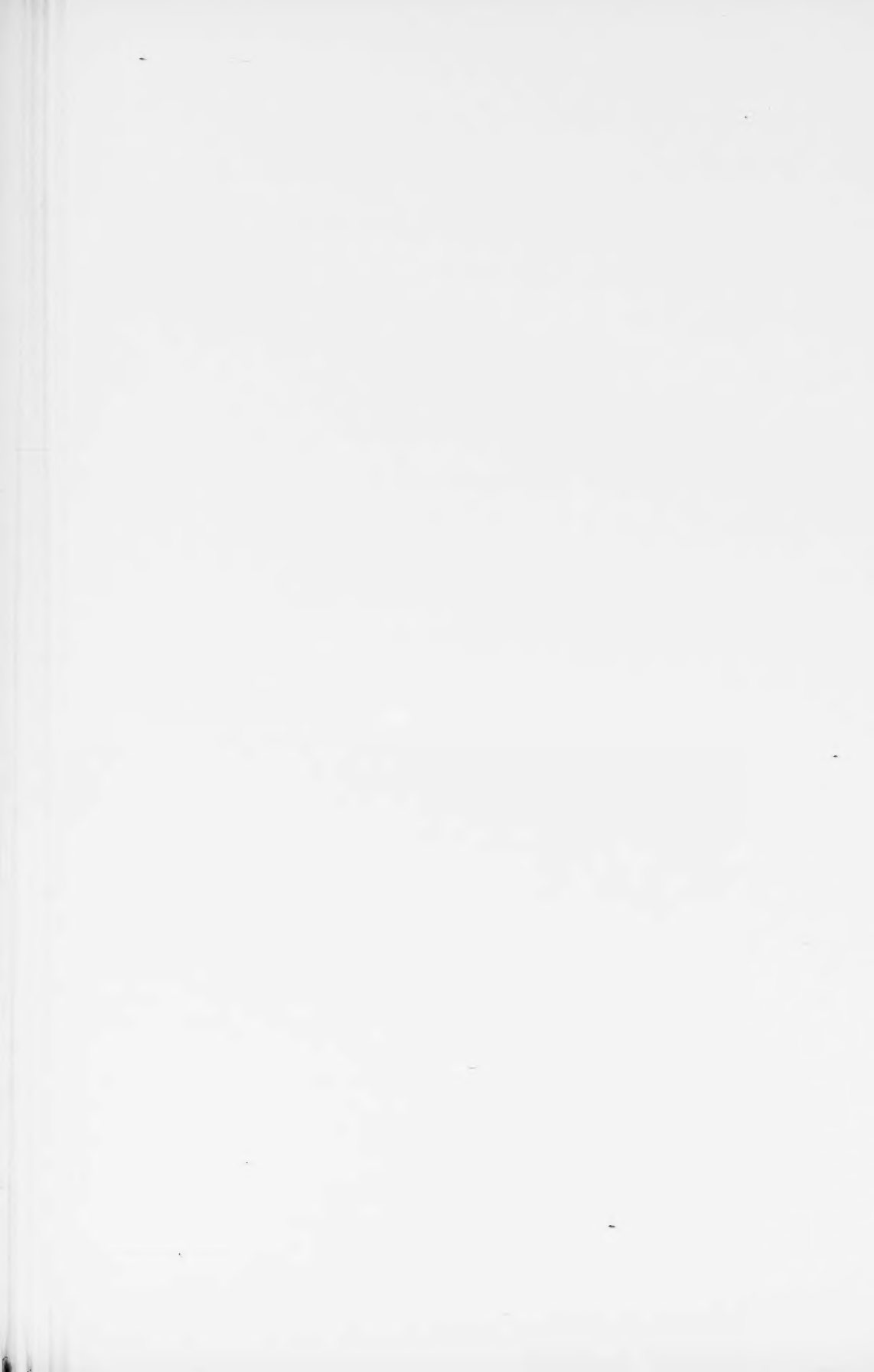
Therefore, a literal interpretation and rigid application of FRCP 6(e)'s secrecy requirements is inconsistent with the obligations and requirements imposed on Michigan attorneys to report attorney misconduct to the Commission. In situations in which an indictment is not returned, the grand jury secrecy provision places the United States Attorney and his/her staff of lawyers in the untenable position of violating the Rules of Professional Conduct by failing to disclose attorney misconduct.

"Rule A-4(b) states, in pertinent part:

The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the Michigan Supreme Court as amended from time to time.

This Court should note that, at times, an indictment is not returned because of problems with the sufficiency of evidence for criminal charges. Although an indictment is not returned, there may remain strong evidence of ethical violations.

There is a compelling need for a state bar grievance committee to fully investigate, and if necessary, prosecute serious charges involving corruption of the legal process. The allegation in this case, that Doe #1 bribed a state court of appeals judge, is of paramount public interest for and concern to the legal profession. Rule 6(e) was not intended to allow an attorney who has violated the rules of professional conduct to go unpunished simply because a grand jury indictment was not returned.



II.

THE SIXTH CIRCUIT COURT OF APPEALS FAILED TO APPLY STANDARDS ESTABLISHED BY THE UNITED STATES SUPREME COURT FORMULATED TO DETERMINE WHETHER A PARTICULARIZED NEED WAS DEMONSTRATED.

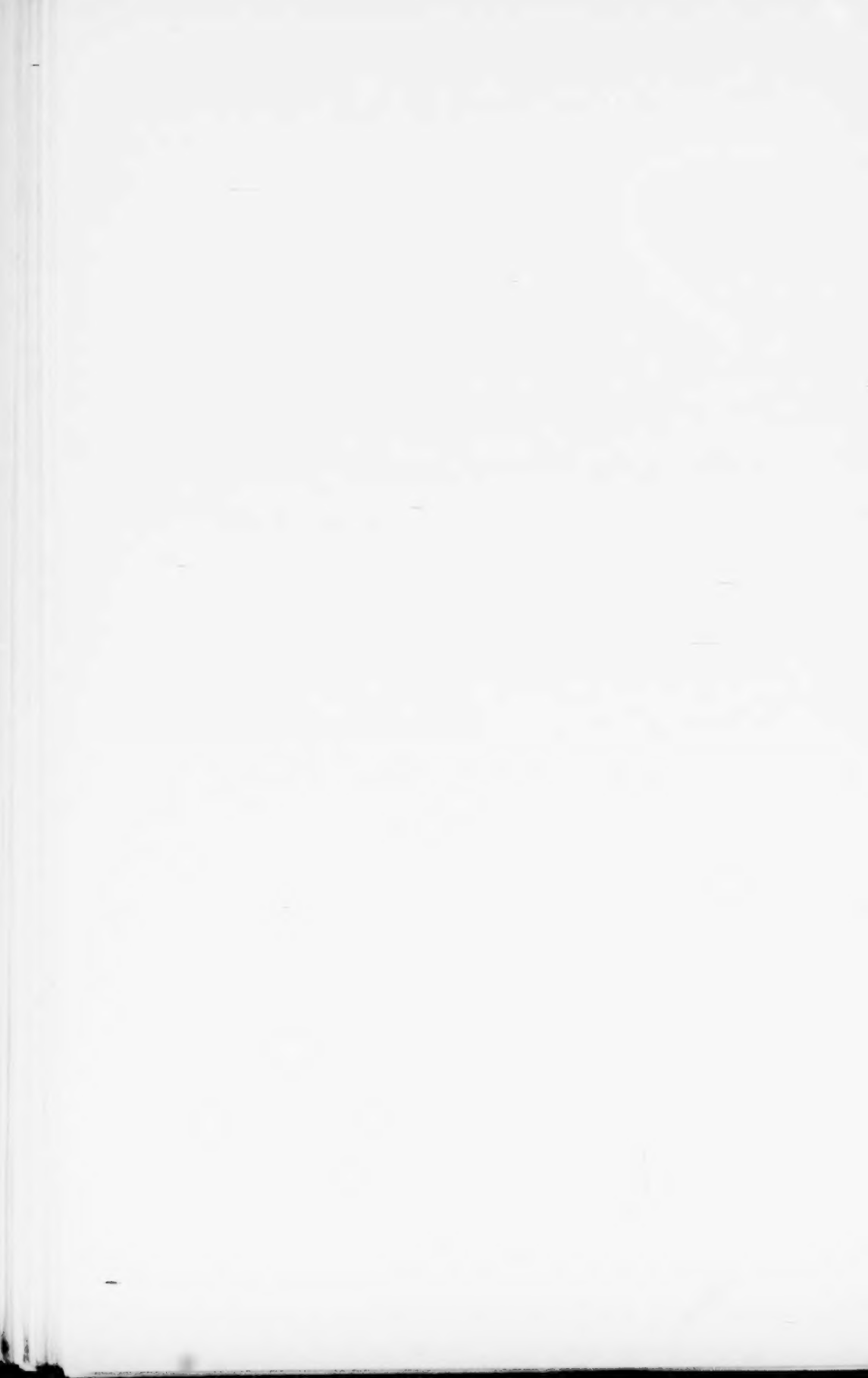
In its cursory discussion concerning the degree of need the Commission was required to establish for disclosure under Rule 6(e)(3)(C)(i), the Sixth Circuit Court failed to weigh the competing interests between continued secrecy and disclosure in light of the standards announced by this Court in Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 99 S.Ct. 1867 (1979); United States v. Sells Engineering, Inc., 463 U.S. 442, 103 S.Ct. 3133 (1983); United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811 (1940); Illinois v. Abbott and Assoc., Inc., 460 U.S. 557, 103 S.Ct. 1356 (1983).



In ruling that the district court's finding of a particularized need in this matter was insufficient to warrant disclosure, the Circuit Court relied on its recent opinion in F.D.I.C. v. Ernst & Whinney, 921 F.2d. 83 (6th Cir. 1990).⁷ However, a review of the Sixth Circuit Court's decisions in both Doe and Ernst & Whinney demonstrate a failure by the Sixth Circuit Court of Appeals to apply the proper standards relating to the question of a movant's demonstration of a particularized need. United States v. Proctor & Gamble, 356 U.S. 677, 78 S.Ct. 983 (1958).

The standard by which a district court's order of disclosure of grand jury evidence should be analyzed is set out in

⁷The judges writing the majority opinion in Doe also sat on the panel which decided Ernst & Whinney.



Douglas Oil v. Petrol Stops, Northwest, 441 U.S. 211, 99 S.Ct. 1667 (1979) wherein the phrase "particularized need" was described as including three factors:

Parties seeking grand jury transcripts under Rule 6(e) must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and, that their request is structured to cover only materials so needed
...."

99 S. Ct. at 1674. See also, United States v. Sells-Engineering, Inc. 463 U.S. 418, 103 S.Ct. 3133 (1983); United States v. Proctor & Gamble, 356 U.S. 677, 78 S.Ct. 983 (1958). The Supreme Court, in Douglas Oil, went on to state:

It is clear from Proctor & Gamble and Dennis v. United States, 384 U.S. 855 [86 S.Ct. 1840, 16 L.Ed.2d 973 (1966)] that disclosure is appropriate only in those cases where the need for it outweighs the public interest in secrecy, and that the burden of

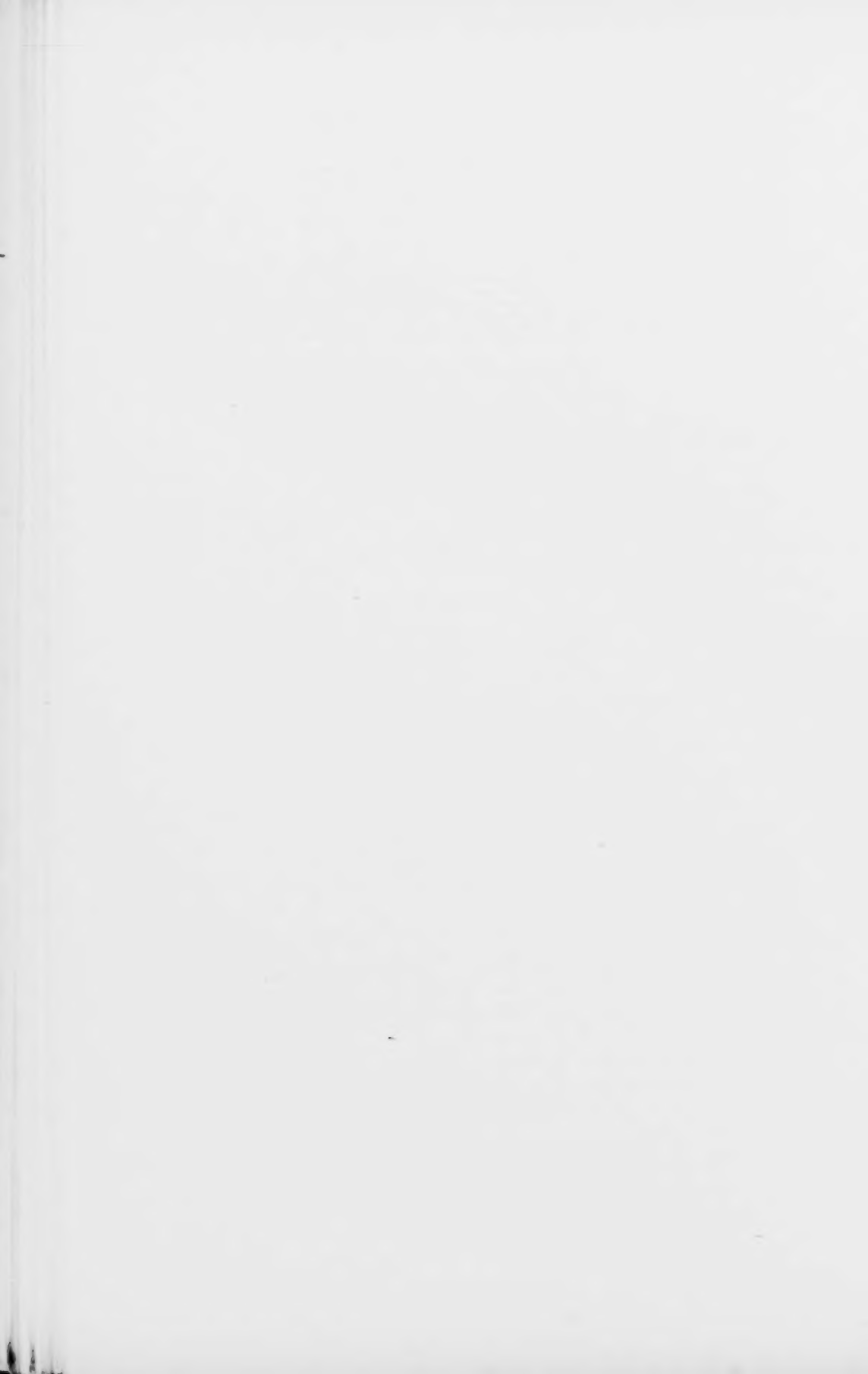
demonstrating this balance rests upon the private party seeking disclosure. It is equally clear that as the considerations justifying secrecy become less relevant, a party asserting a need for grand jury transcripts will have a lesser burden in showing justification....

441 U.S. at 233, 99 S.Ct. at 1675.
(Emphasis added).

Later, in United States v. Sells Engineering, Inc., 103 S.Ct. 3133, 3149, (1983) this Court reiterated the federal courts' responsibility to strike a balance between the competing interests:

The "reduced" interest in secrecy is further diminished in this case when the identity of the party requesting access is considered. The Supreme Court has stated:

The Douglas Oil standard is a highly flexible one, adaptable to different circumstances and sensitive to the fact that the requirements of secrecy are greater in some situations than in others....



In the instant matter, the Circuit Court in determining the existence of a particularized need, ignored the identity of the party requesting access to the grand jury materials. In this matter a state agency, with a duty mandated by the Michigan Supreme Court, to investigate attorney misconduct, sought evidence of possible attorney wrongdoing. The district court was not faced with a request from a private party in civil litigation as was the case in F.D.I.C. v. Ernst & Whinney, supra.

Courts have held that the burden to demonstrate a compelling need is reduced where disclosure is not simply sought by a private person for use in a judicial proceeding but rather by an "independent public body (Connecticut Grievance Committee) charged with the performance of a public duty in a wholly disinterested and



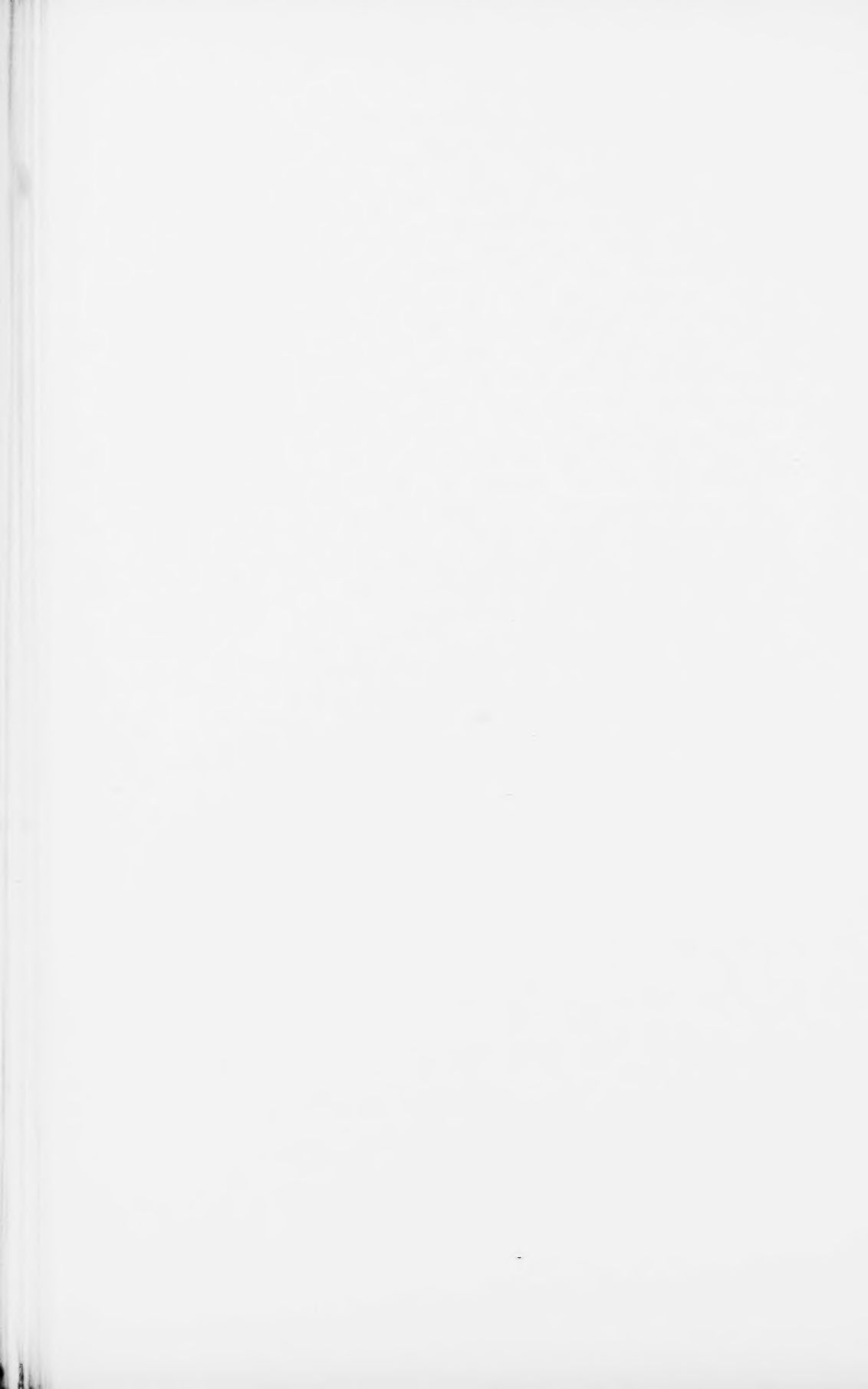
impartial manner." United States v. Sobotka, 623 F.2d 764, 767 (2d Cir. 1980), quoting Grievance Committee of Hartford County Bar v. Broder, 152 A. 292, 296 (S.Ct. Conn. 1930). The Michigan Attorney Grievance Commission is such a body. See also, Index Fund v. Hagopian, 512 F. Supp. 1122 (S.D. N.Y. 1981) (court distinguished between release of grand jury materials to the government or an official agency as opposed to a private party); United States v. Interstate Dress Carriers Inc., 280 F.2d 52, 54 (2d Cir. 1960) (court stressed that the grand jury documents were to be released "in furtherance of a lawful investigation").

The Circuit Court's decision also failed to consider the effect the disclosure would have on the policies underlying grand jury secrecy. Those policies are:



(1) to prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent the persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes; (5) to protect an innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no possibility of guilt.

Douglas Oil Co. v. Petrol Stops,
Northwest, 441 U.S. 220, 99 S.Ct. 1667,
1673 n. 10. This Court has held that:
"[A]s the considerations justifying secrecy
become less relevant, a party asserting a
need for grand jury transcripts will have
a lesser burden in showing justification."
Douglas Oil, 99 S.Ct. at 1675; See also,



Beatrice Foods Co. v. United States, 312 F.2d 29 (8th Cir. 1963); State of Illinois v. Sarbaugh, 552 F.2d 768 (7th Cir. 1976); In Re Shopping Cart Antitrust Litigation, 95 F.R.D. 309 (S.D. N.Y. 1982).

The Sixth Circuit Court in Doe failed to weigh carefully the competing interests in light of the relevant circumstances. United States v. Sells Engineering, 463 U.S. 481, 103 S.Ct. 3133 (1983); Petrol Stops, Northwest v. Continental Oil, 647 F.2d 1005, 1008 (9th Cir.) cert. denied, 454 U.S. 1098, 102 S.Ct. 672 (1981); In Re Grand Jury Proceedings Relative to Perl, 838 F.2d 306 (8th Cir. 1988).

The Circuit Court also failed to recognize that the grand jury's investigation had terminated and that most of the reasons for grand jury secrecy were no longer applicable and the others were less compelling. Douglas Oil Co., 441 U.S.



at 223; In Re Grand Jury, 583 F.2d 128, 130 (5th Cir. 1978). The traditional reasons for cloaking grand jury proceedings have more force in relation to an existing grand jury. In Re Grand Jury Proceeding, 483 F. Supp. 411 (E.D. Penn. 1979). This Court has stated that, "After the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it." United States v. Socony-Vacuum Oil, Co., 310 U.S. 150, 60 S.Ct. 811, 849 (1940).

The first three policy reasons for grand jury secrecy as cited in the Douglas Oil case and set forth above clearly did not apply in Doe, since the grand jury had completed its investigation and had not returned an indictment. In The Matter of Electronic Surveillance, 596 F. Supp. 991, 996 (E.D. Mich. 1984). In Re Grand Jury Proceedings, 483 F. Supp. 422 (E.D. Penn.



1979).

Lapse of time between the grand jury proceedings and the motion for disclosure is a factor to be considered on the issue of the public interest in continued secrecy. The "need for secrecy may diminish with the passage of time." State of Illinois v. Sarbaugh, 552 F.2d 768, 776, n.12 (7th Cir. 1977). The grand jury proceedings relating to the Doe matter terminated some time ago. It has been one full year since the Commission requested access to the grand jury materials in this matter.

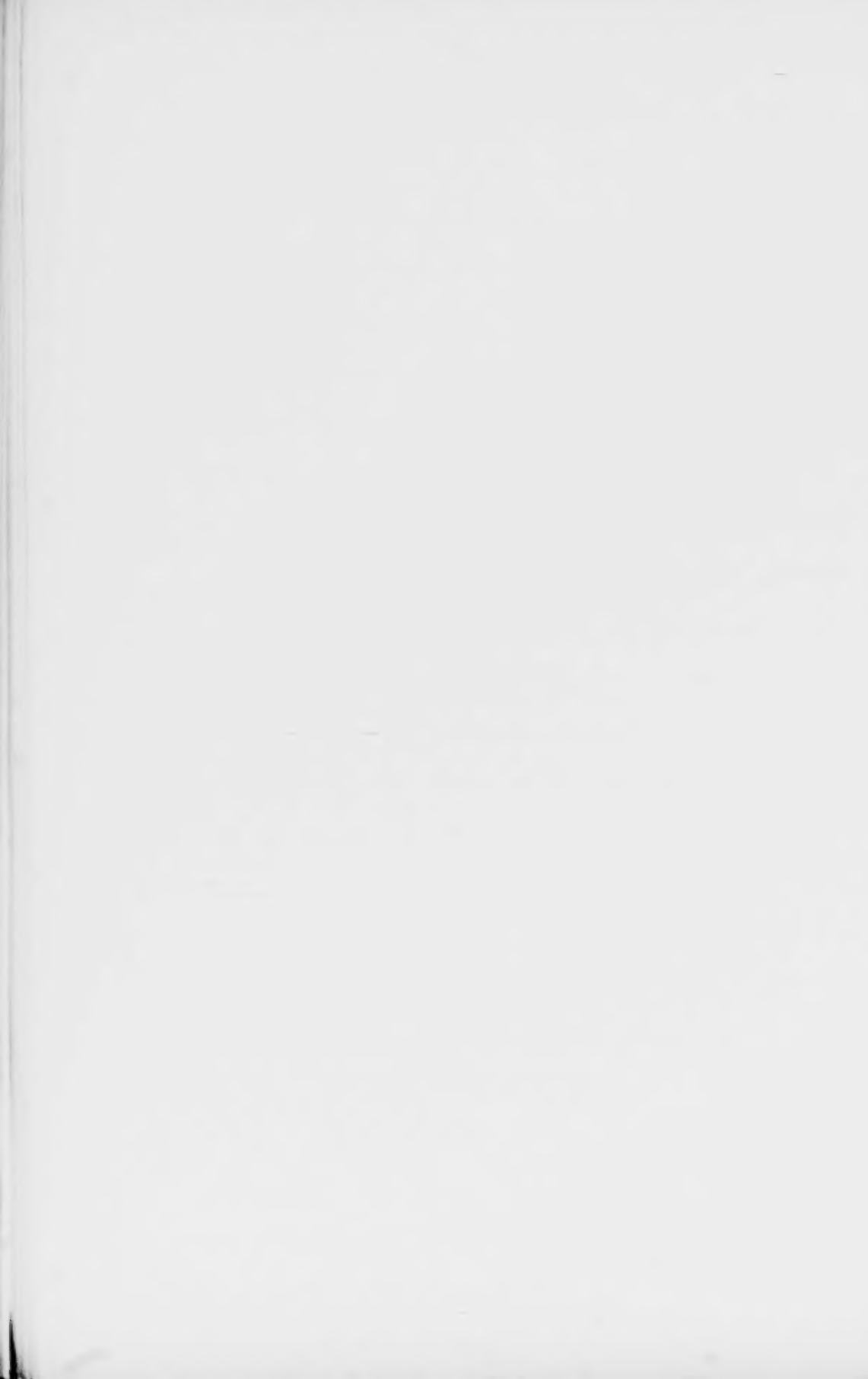
Later, in Sells Engineering, this Court declared that the standard for establishing a right to disclosure is not a rigid one but rather is "a highly flexible one, adaptable to different circumstances and sensitive to the fact that the requirements of secrecy are



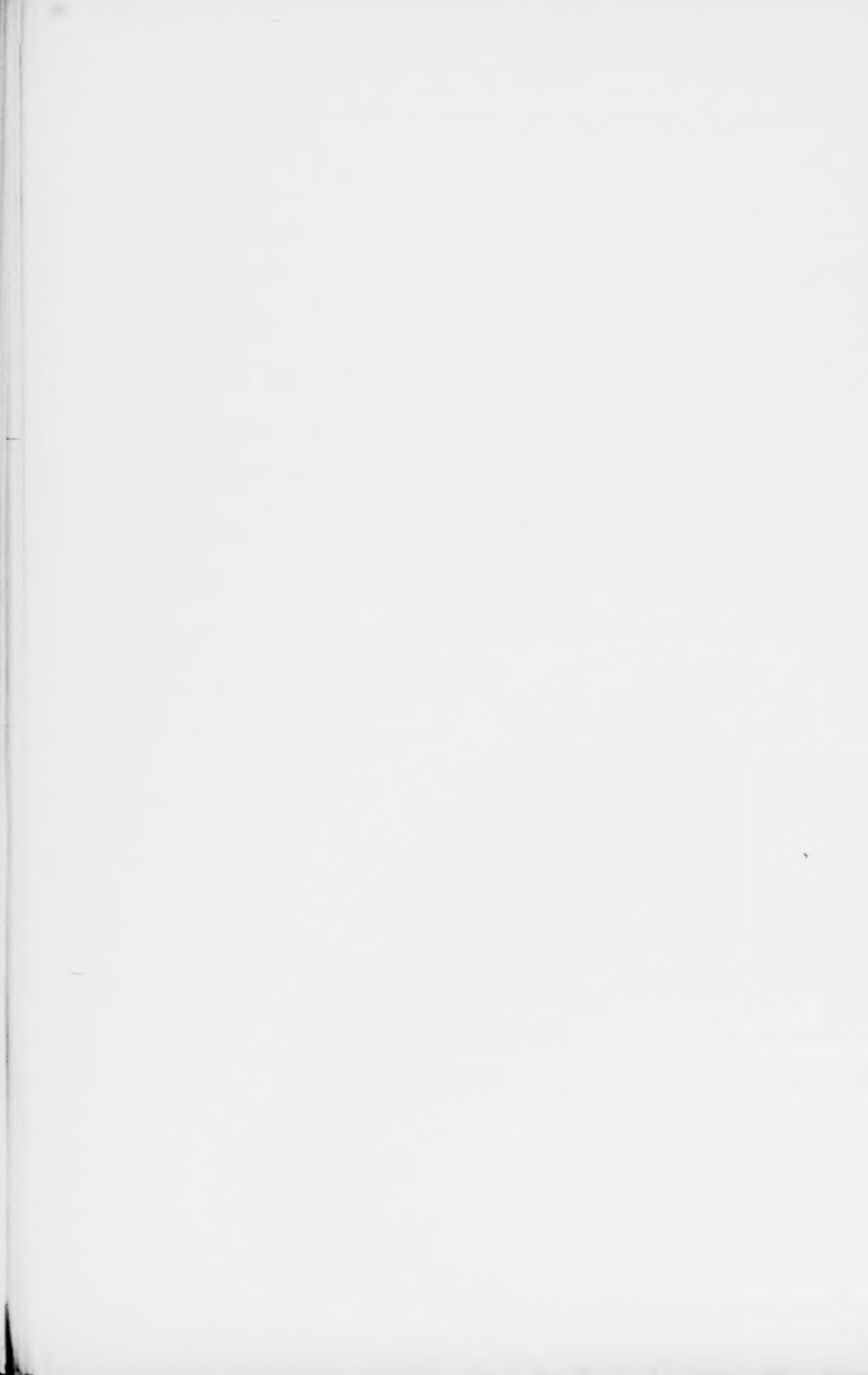
greater in some situations than in others."
103 S.Ct. at 3149.

Because the grand jury had ceased its investigation, there is no need to protect against the accused escaping before they were indicted and arrested. Finally, there is no risk of tampering with the witnesses or inhibiting the grand jury's investigation and deliberation. In The Matter of Disclosure of Testimony Before the Grand Jury, Etc., 580 F.2d 281 (8th Cir. 1978).

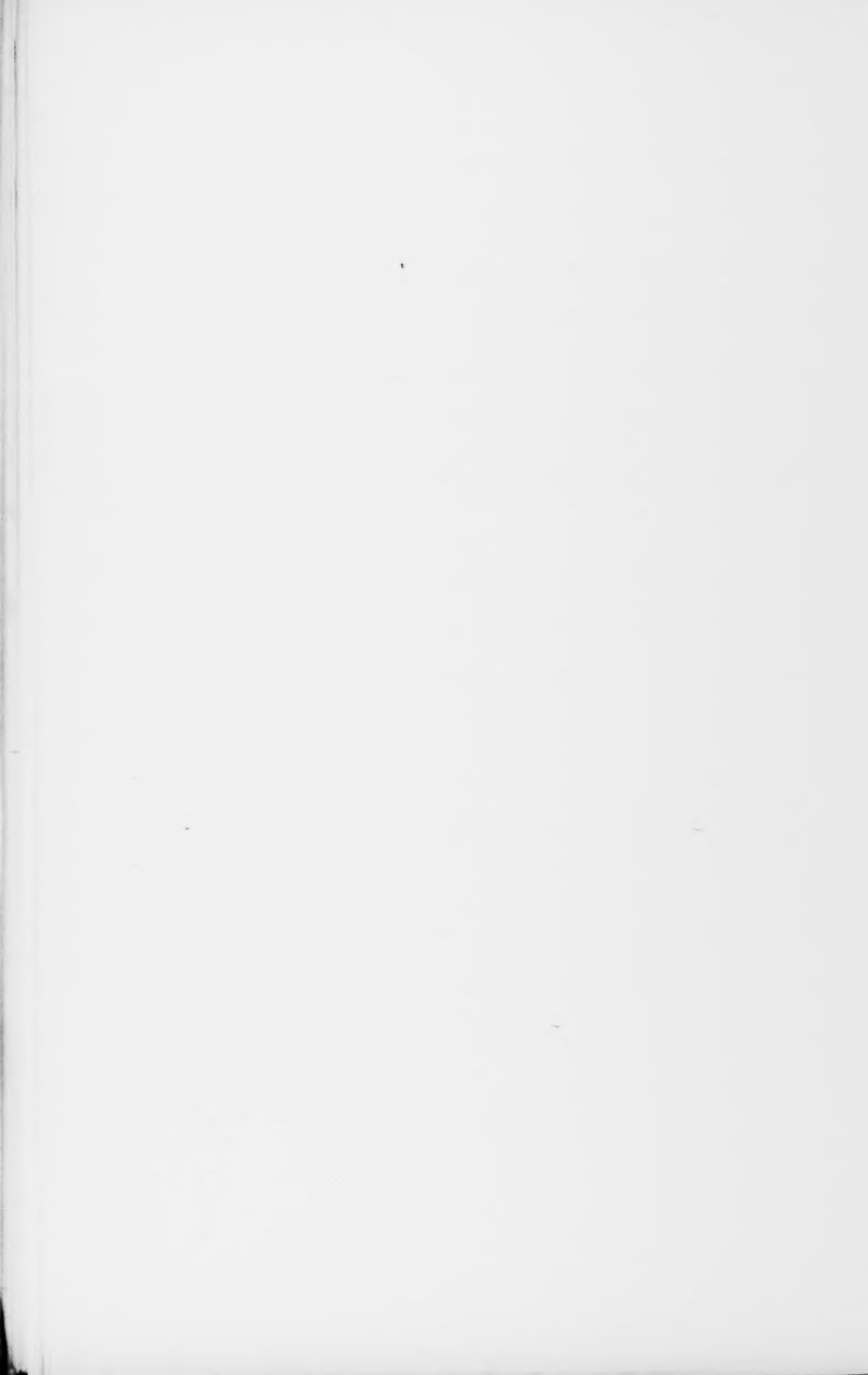
Furthermore, disclosure of the materials sought here will not frustrate the reasons for secrecy which exist after a grand jury's investigation is ended. The remaining reasons -- to protect the reputations of the innocent and to encourage persons to testify fully and freely before future grand juries -- are less compelling in this case. Illinois v.



Abbott & Associates, Inc., 460 U.S. 587, 103 S.Ct. 1356 (1983). First, the risk of injury to the reputations of innocent persons is slight because the Commission's investigations are confidential. Mich. Ct. Rule 9.126(A). (App. p. 74) The fact that an attorney is suspected of wrongdoing is not made public unless the Commission files a formal complaint with the Attorney Discipline Board. Mich. Ct. Rule 9.126; In The Matter of Electronic Surveillance, 596 F. Supp. at 996-997. For the same reason, the identities of the witnesses disclosed to the Commission would not deter others from testifying before future grand juries. The requirement of confidentiality imposed upon the Attorney Grievance Commission and its staff will be sufficient to protect the remaining limited interest in secrecy and will present minimal or no risk of leakage or improper use.

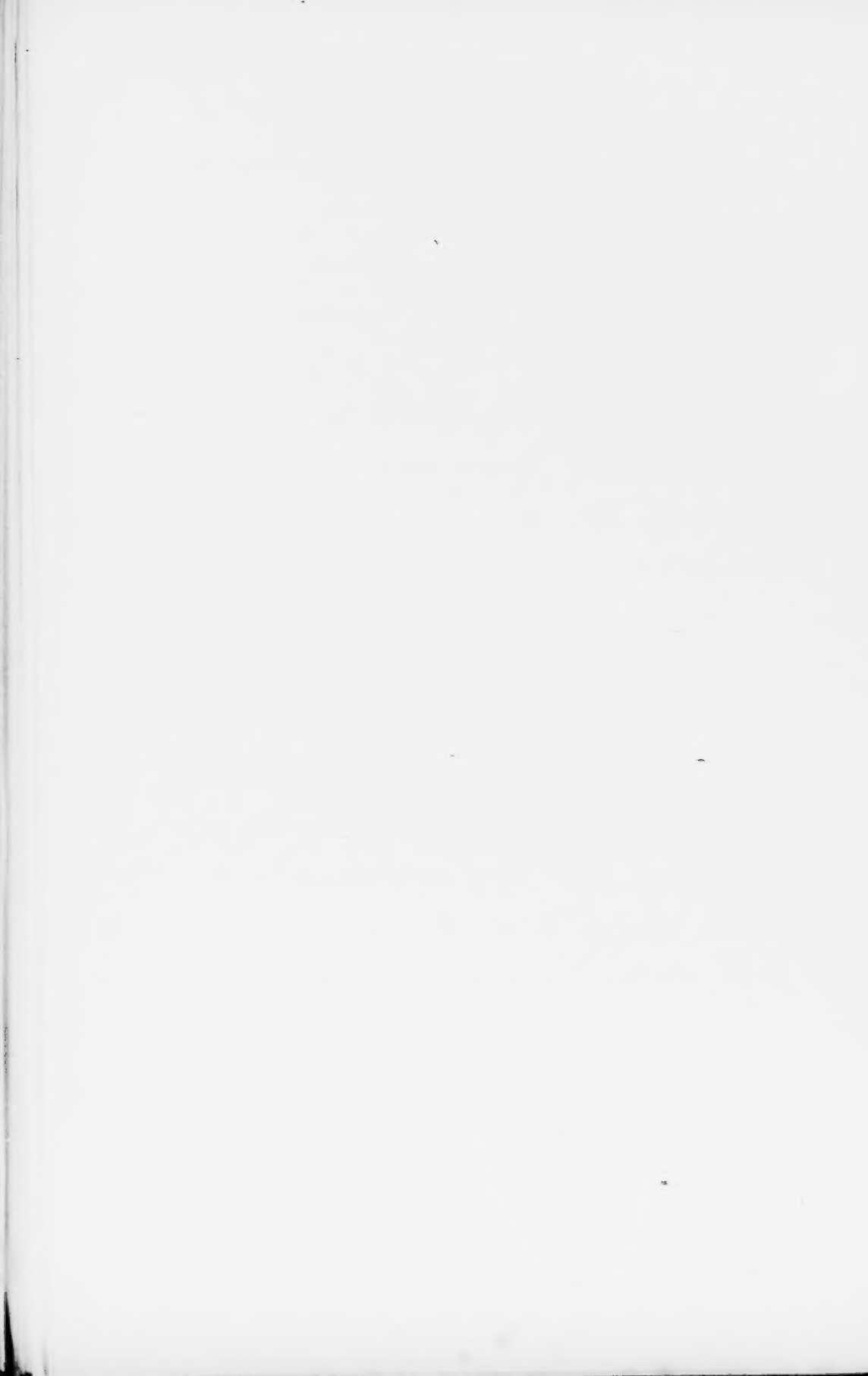


Lastly, it is important to note that the United States Attorney has conceded the minimal importance of preserving the secrecy of the grand jury. United States v. Climatedp, 482 F. Supp. 376 (N.D. Ill. 1979). The United States Attorney did not oppose the disclosure of the grand jury evidence in this case, thus conceding the minimal importance of grand jury secrecy in this matter and recognizing the Commission's need to obtain all relevant and material information contained therein. It would be an impossible task for the Commission to demonstrate its need with greater precision since as it has had no prior access to the evidence. While mere consent of the government alone does not automatically warrant disclosure of grand jury material, it is equally true that the objecting parties' interest in



confidentiality does not necessarily mandate non-disclosure. United States v. Climatemp, 482 F. Supp. 376 (N.D. Ill. 1979). In applying the standard set out by this Court in Douglas Oil, a district court is "infused with substantial discretion." The Sixth Circuit Court erred in finding that the district court had abused its discretion in this case.

Although a grand jury indictment was not returned against the attorneys who were the focus of the federal probe, the Commission learned that the investigation revealed serious violations of ethical rules governing the attorneys' conduct. Since there was no indictment, the Grievance Commission is not in a position to know whether it has investigated the people or events examined by the grand jury. It is the Attorney Grievance Commission's duty to investigate all



allegations of attorney misconduct. Failure to release the information being sought by the Commission will prevent a proper investigation of such misconduct. In Re Barker v. Oregon State Bar, 741 F.2d 250 (9th Cir. 1984).

In In Re Barker v. Oregon State Bar, the court stated:

Absent disclosure of the requested documents, it is clear that no disciplinary proceedings are likely to occur. Frustration of the Oregon State Bar's ability to investigate and sanction the attorneys who violate the rules of professional responsibility will be unjust. Its frustration in this case will also prompt injustice.

741 F.2d at 255.

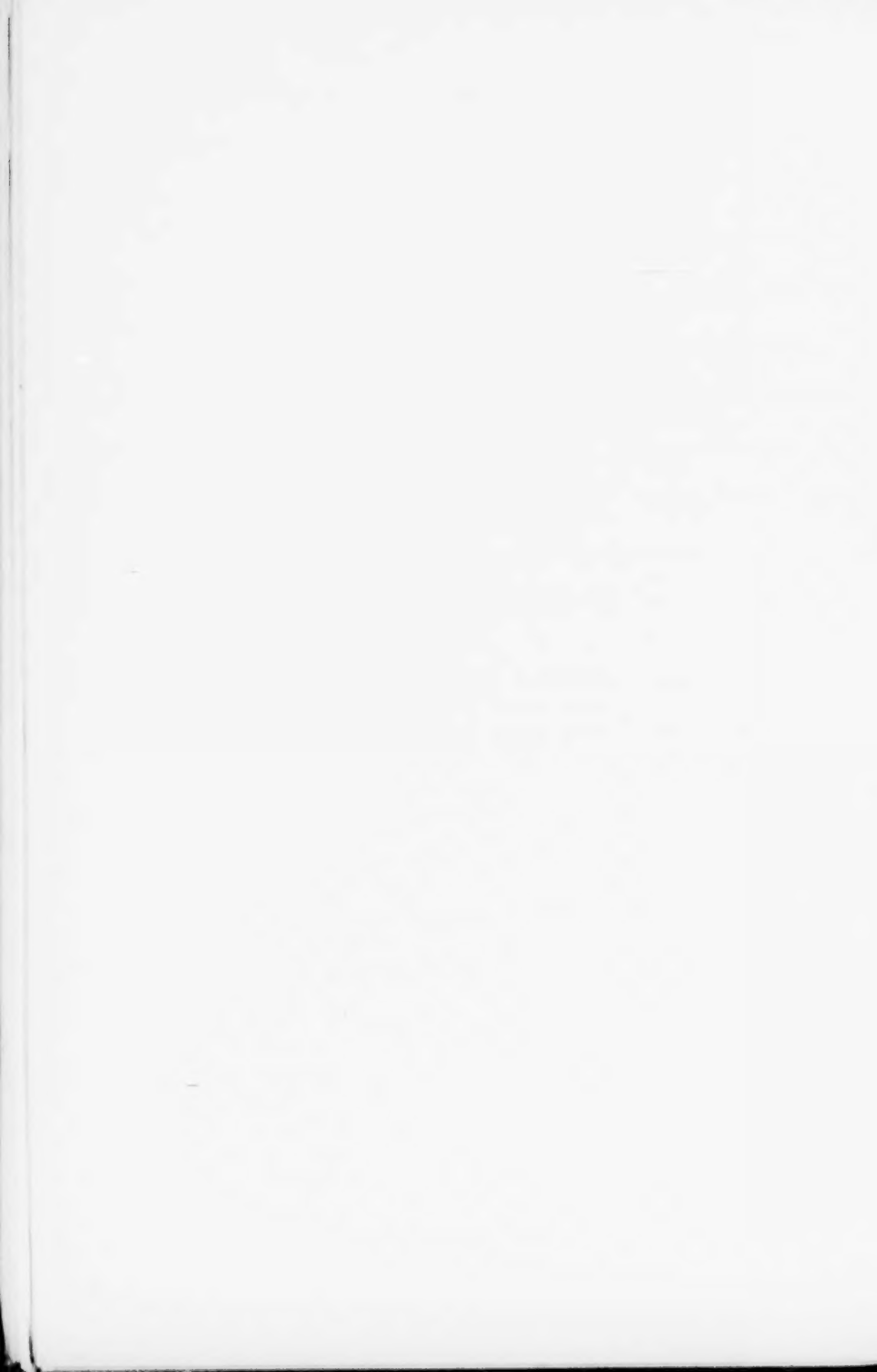
Whenever charges of corruption or unethical conduct of public officials surface, a compelling need for disclosure exists. In Re Bullock, 103 F. Supp. 639 (D.C. 1952); United States v. Salanitro, 437 F. Supp. 240 (D. Neb. 1977); In Re



United States Order Pursuant to Provisions of Rule 6(e), 505 F. Supp. 25 (W.D. Penn. 1980).

In United States v. Salanitra, 437 F. Supp. 240 (D. Neb. 1977), the Nebraska Committee on Judicial Qualifications petitioned to examine evidence submitted to a federal grand jury concerning judges. In deciding that the Judicial Qualifications Commission should be given access to the grand jury materials, the Court stated:

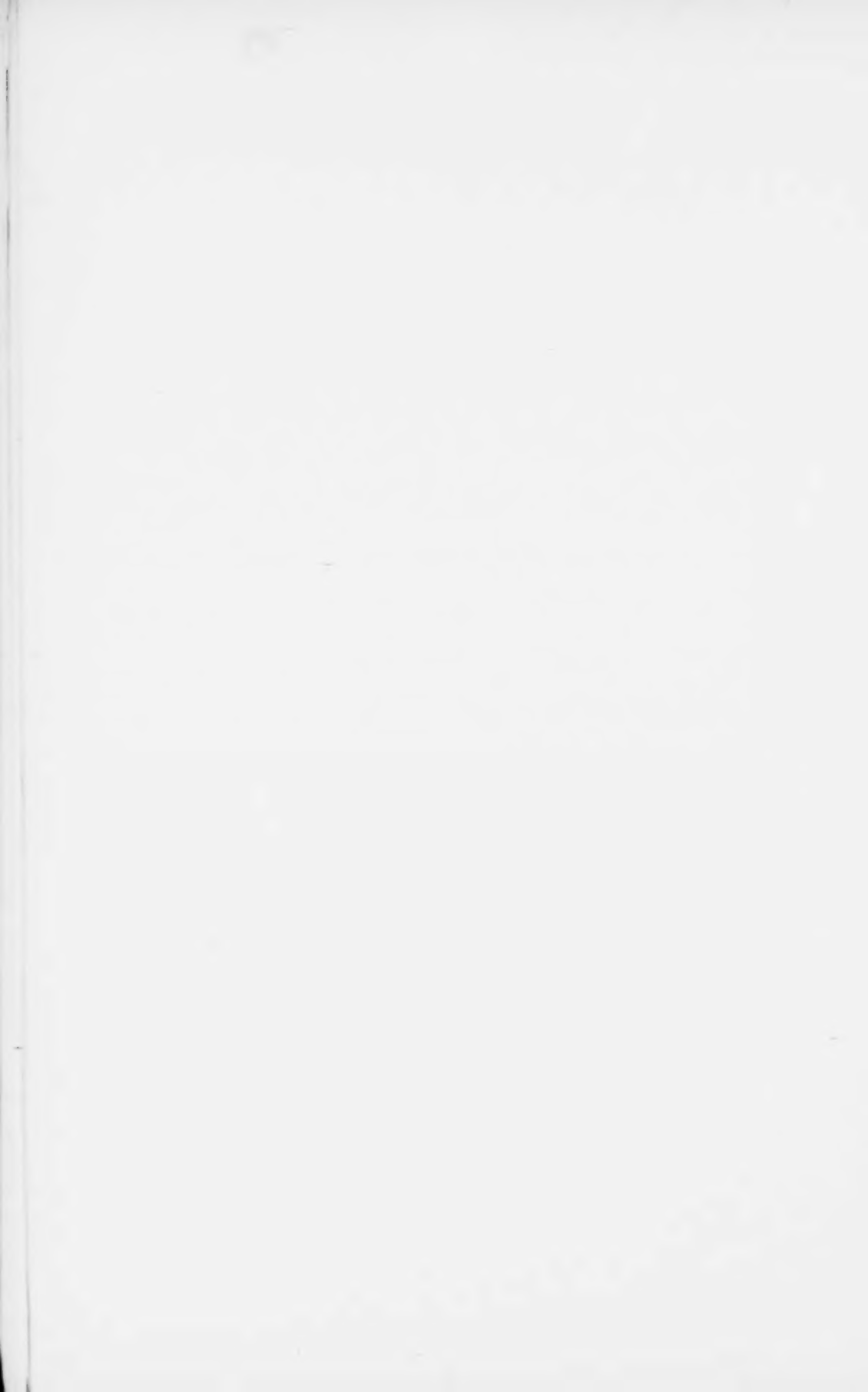
Whenever charges of corruption of public officials and employees surface, pointed attention to them is deserved. The integrity of the Courts is shaken by every misconduct of judges or lawyers, who are the court's officers. Neither the executive nor the legislative arm of the government is worthy of confidence, if its officers are corrupt Reestablishing faith in state and city governments by proving or disproving the faithfulness of their officials is a goal with enough urgency to carry a major part of a compelling and particularized need. Unless the information held by the Grand Jury can be acquired readily



another way, the primacy of the goal should be enough to allow re-evaluation of the Grand Jury testimony. 437 F. Supp. at 245.

In the case of In re Petition to Inspect and Copy Grand Jury Materials, 576 F. Supp. 1275 (S.D. Fla. 1983), aff'd 735 F.2d 1261 (11th Cir. 1984) cert. denied, 105 S.Ct. 254 reh., denied, 105 S.Ct. 406 (1985), a "Special Committee" was appointed by the United States Court of Appeals for the Eleventh Circuit to investigate charges of misconduct brought against U.S. District Judge Alcee L. Hastings. In deciding that the grand jury materials being requested by the Judicial Standards Committee should be released the court stated:

. . . The Act requires a full, fair, and timely investigation by the Committee so that public confidence in judicial integrity and credibility may be preserved. Society is entitled to have a mechanism that works to the end that innocent judges and magistrates are protected in their reputations and independence and that the



judiciary is kept honorable and
perceived to be so

576 F. Supp. at 1282.

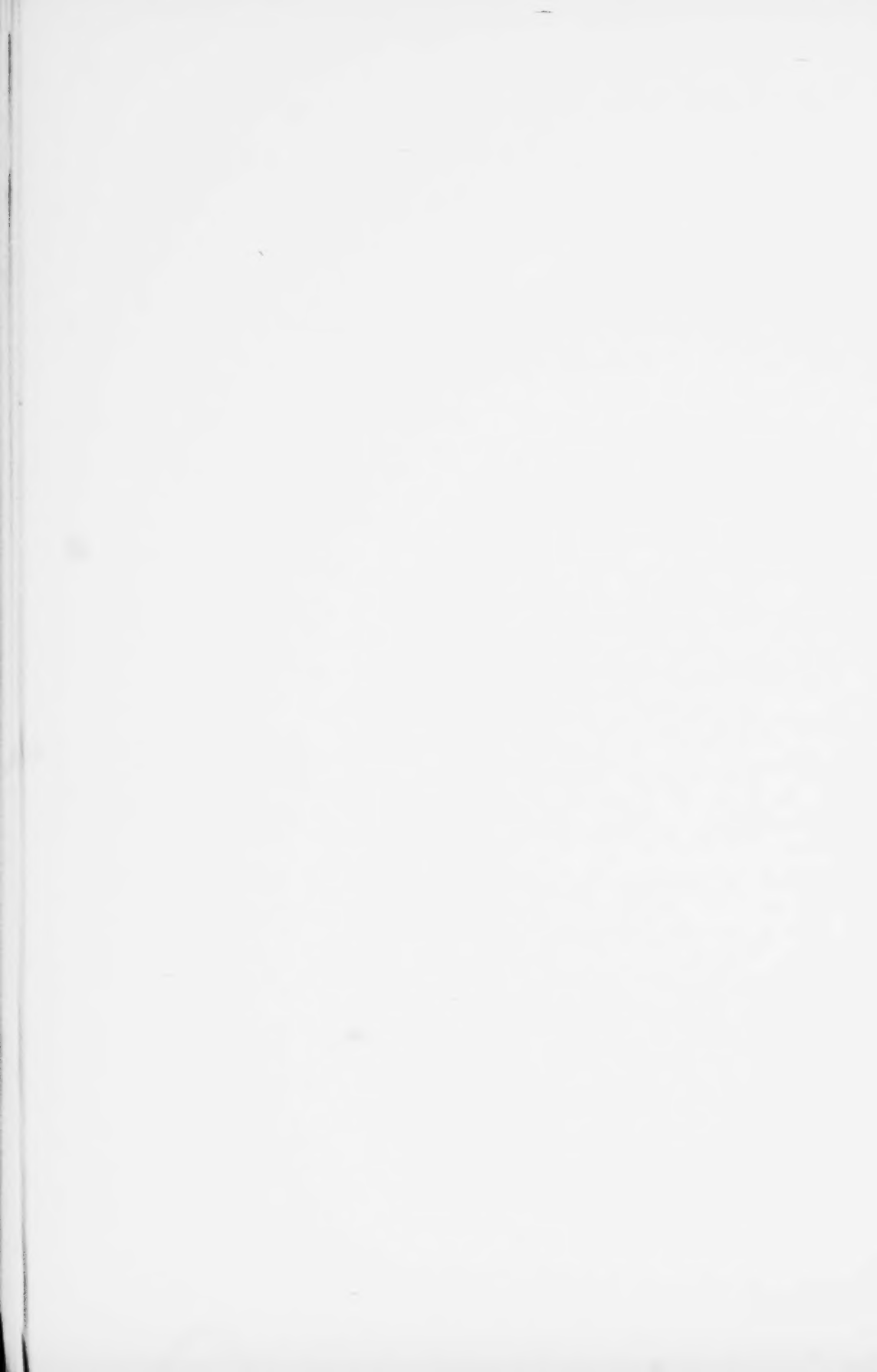
In In The Matter of Disclosure of
Testimony Before the Grand Jury, 580 F.2d
281 (8th Cir. 1978), the Council for
Discipline of the Nebraska State Bar
Association was held to be entitled to
disclosure where it demonstrated that state
investigations of improprieties by
attorneys and judges would be seriously
impeded without the release of certain
grand jury testimony. The court noted that
"the overall purpose of Rule 6(e), which
provides for grand jury secrecy and limited
disclosure exceptions, is to 'facilitate
efficient adjudication for the protection
of the public'." 580 F.2d at 287 (quoting
In re Special February 1971 Grand Jury v.
Conlisk, 490 F.2d 894, 898 (7th Cir.
1973)).

Finally, In Re Bullock, 103 F. Supp.



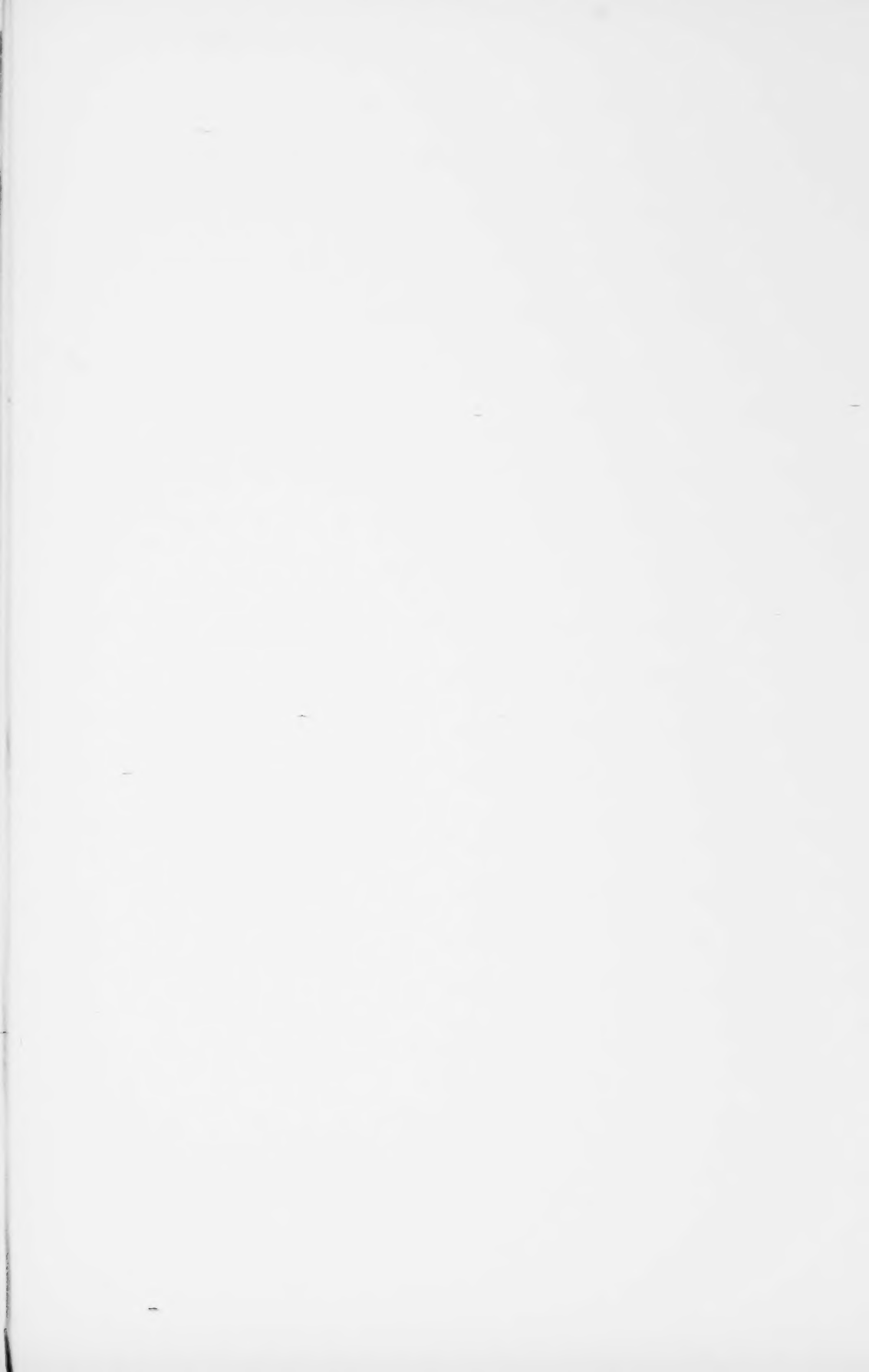
639 (D.C. Dist. of Col. 1952), the court released grand jury materials in connection with a proceeding to determine whether Bullock, a police officer, had been derelict in his duties. The maintenance of police integrity and credibility is essential to public confidence. The disclosure of grand jury evidence to a police board in order to discipline those abusing public offices was a public interest sufficient to override the policy shielding grand jury evidence from public scrutiny.

The Sixth Circuit Court's finding in the case, that the substantial public interest in the integrity of the bar was an insufficient particularized need, is inconsistent with decisions allowing disclosure based precisely on this type of interest. The reasons cited in the aforementioned cases permitting disclosure of



grand jury evidence to disciplinary committees are no different than those cited by the Commission in this case. In fact, a panel of judges from the Sixth Circuit Court of Appeals, assigned to hear a case by designation in the Eleventh Circuit, affirmed a District Court's ruling that a judicial investigating committee had established a particularized need by simply stating that a full review of the complete record of the grand jury was essential in order for the inquiry to be complete and "reach the degree of thoroughness necessary to ensure public confidence that justice had been done." In Re Request for Access To Grand Jury Materials, 833 F.2d. at 1440. Relying entirely on United States Supreme Court principles, the Sixth Circuit panel held:

Disclosure is appropriate only in those cases in which the need for disclosure outweighs the interest in secrecy. As the



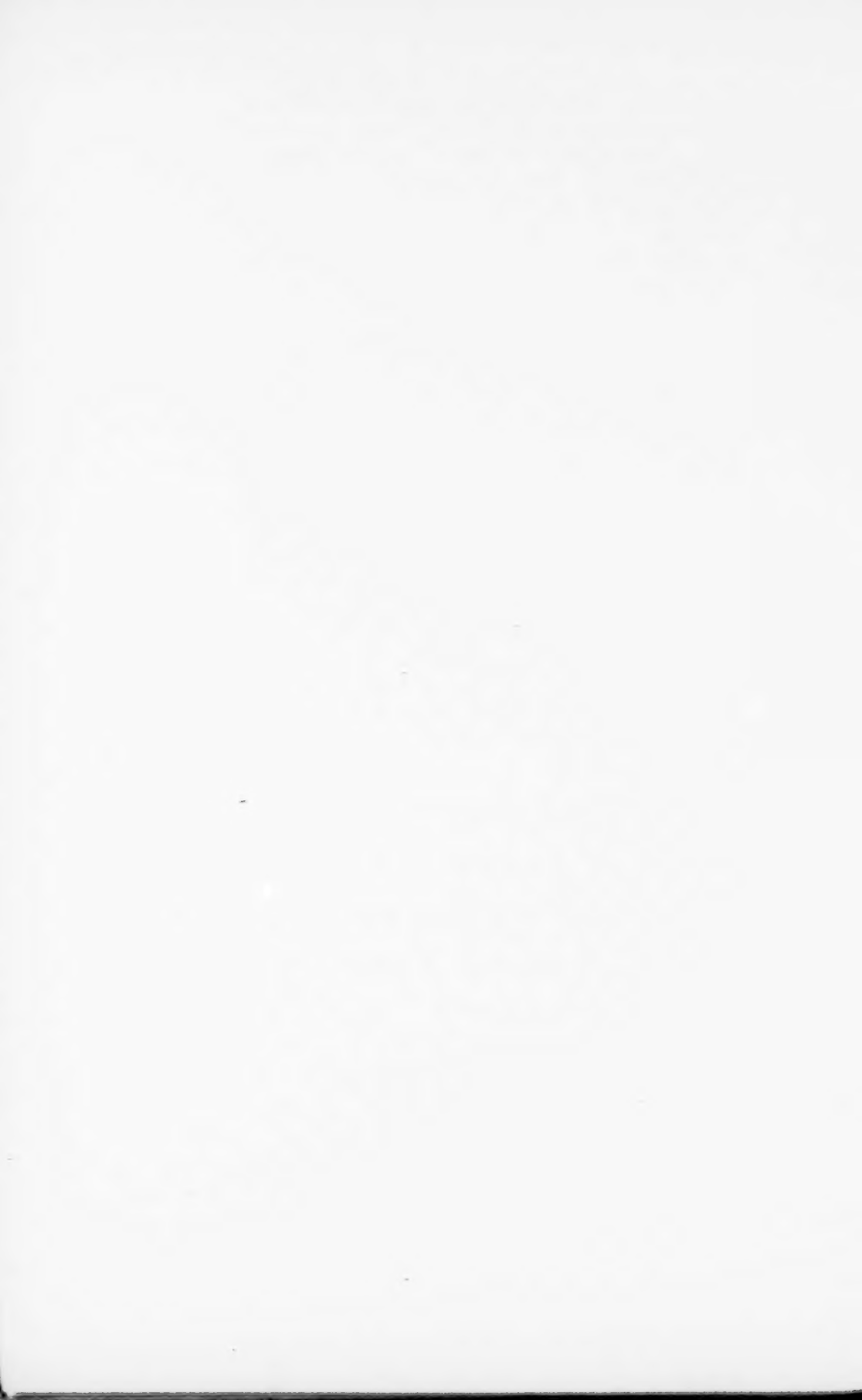
considerations justifying secrecy become less relevant, the burden of showing the need for disclosure is lessened. After the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it. . .

The Committee has asserted a particularized need sufficient to warrant disclosure in this case. The Committee has asserted an interest in conducting a full and fair impeachment inquiry. The Committee's need for grand jury material, which may contain the freshest recollections of some of the key witnesses to the events being investigated by the grand jury, is particularly compelling in this inquiry, since the events which are the subject of impeachment inquiry took place some seven years ago.

833 F.2d. at 1442. (Emphasis added).

The Sixth Circuit Court, in Doe, failed to apply the principles noted above and further erred in finding that the particularized need of the Grievance Commission was insufficient to justify disclosure.

Additionally, the Court's statement in



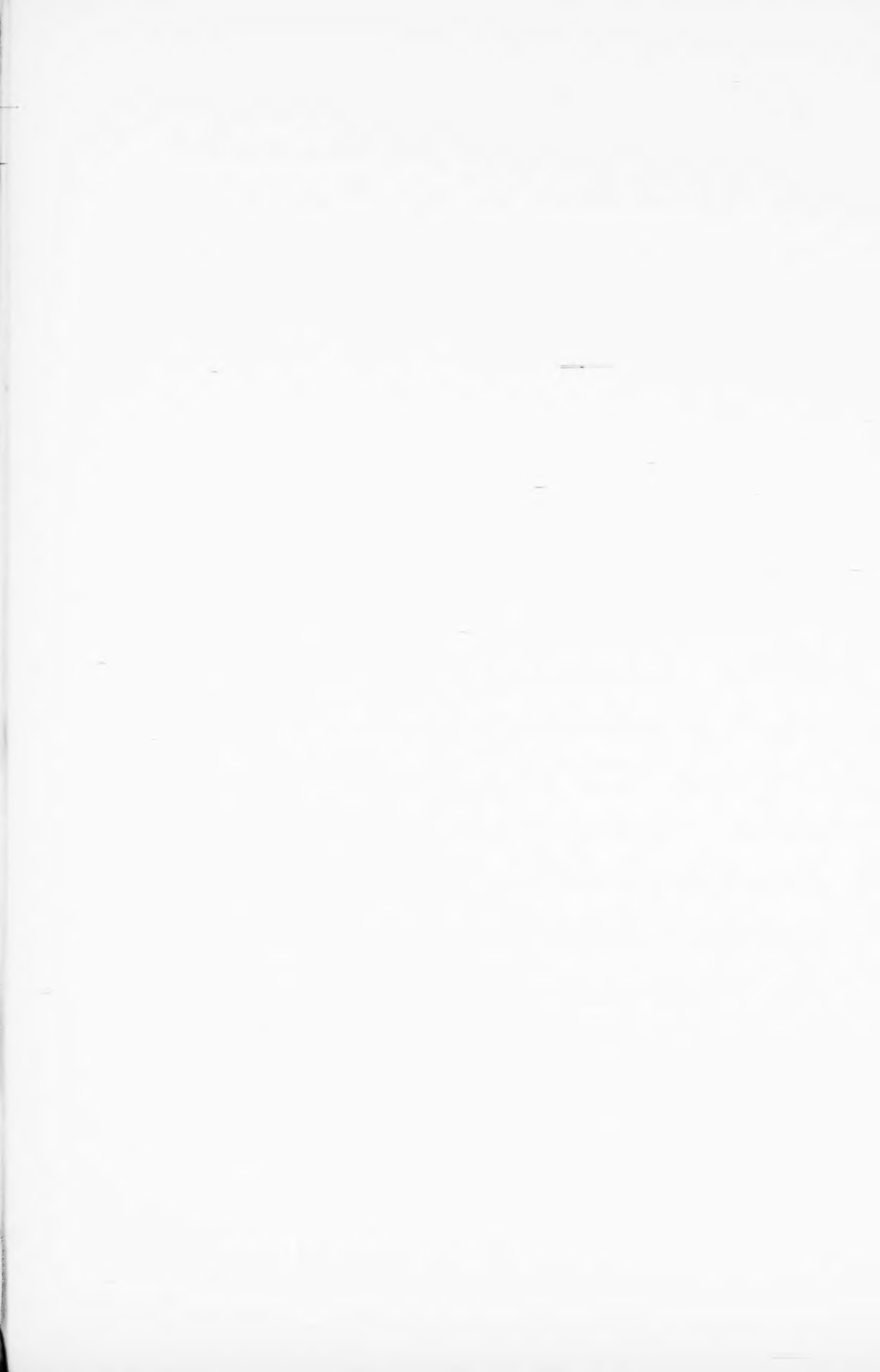
Doe that the "constitutional protection afforded by the secrecy of the grand jury is far more important, particularly in a case such as this one where the Commission holds the unused power to subpoena witnesses to gather its own evidence to protect the public" was also in error. (Doe Opinion, p. 13). The Commission has subpoenaed numerous witnesses and attempted to gather its own evidence in connection with this investigation. Due to the Commission's vigorous investigation of this matter, Doe filed an action for a protective order in the Michigan Supreme Court seeking to prevent further investigation by the Commission. Doe's request for relief was denied.

Lastly, Doe has failed to indicate any specific harm that would result from the disclosure of grand jury evidence in this case. 833 F.2d 1438. A mere generalized



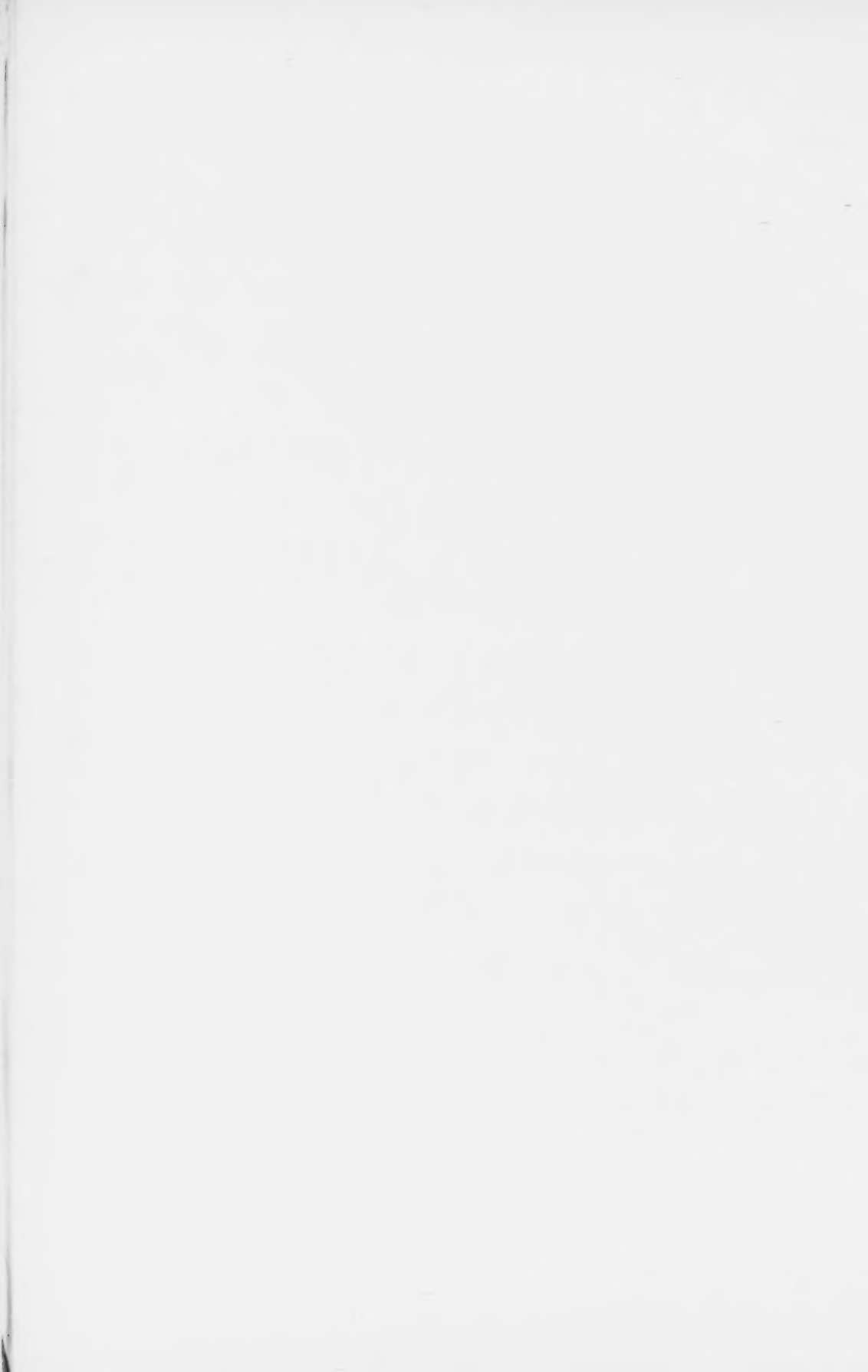
assertion of secrecy in grand jury materials must yield to the demonstrated need for evidence in an investigation relating to allegations of serious attorney misconduct. In Re Request for Access to Grand Jury Material, 833 F.2d 1438 (7th Cir. 1987).

The need for disclosure in this situation, to promote a strong public interest in the sanctioning of unethical attorneys, is overwhelming. "Where public interest is superior to the purpose of secrecy of grand jury testimony, the latter protection will be disregarded and the minutes divulged within the limits prescribed by law" In Re Grand Jury Transcript, 309 F. Supp. 1050, 1052 (S.D. Ohio 1970) citing In Re Bullock, 103 F. Supp. 639 (D.C. Dist. of Col. 1952). The Michigan Attorney Grievance Commission represents the interests of protecting the



public, the courts, and the legal profession. State Bar v. Woll, 401 Mich 155 (1977); State Bar Grievance Administrator v. Gillis, 402 Mich. 286 (1978). Therefore a compelling and particularized need for disclosure exists.

To conduct a full and fair investigation and "reach the degree of thoroughness necessary to ensure public confidence," the Commission must have access to all available evidence. That access should not be denied to the Michigan Attorney Grievance Commission which is investigating serious allegations of attorney misconduct. In Re Request for Access of Grand Jury Materials, 833 F.2d at 1445.

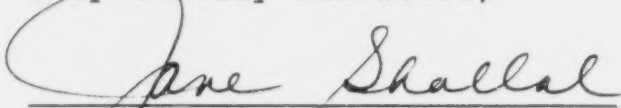


RELIEF

The Michigan Attorney Grievance Commission requests that plenary review be granted.

Dated: Detroit, Michigan
September 17, 1991

Respectfully submitted,

A handwritten signature in cursive script, reading "Jane Shallal", written over a horizontal line.

JANE SHALLAL (P-35151)
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